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# The Minnesota Crime Victims Reparations Act: A Preliminary Analysis

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# THE MINNESOTA CRIME VICTIMS REPARATIONS ACT: A PRELIMINARY ANALYSIS

*Until recently, the primary focus of criminal justice systems everywhere has been upon the criminal—the apprehension, trial, conviction, sentencing, and incarceration of the perpetrator of the crime. The victim, in many instances, has been left unaided and forgotten. The Minnesota Legislature responded to this problem, in 1974, by enacting the Crime Victims Reparations Act. The Act is, in essence, an insurance policy of last resort for victims of crimes in Minnesota. This Note examines the scope of the Act and the procedures for obtaining recovery.*

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## I. INTRODUCTION

During the last quarter-century our criminal justice system has been the subject of increased public scrutiny. Prompted by a spiraling crime rate,<sup>1</sup> those entrusted with law enforcement have begun to reassess present methods of crime prevention<sup>2</sup> with a view toward increasing the system's effectiveness.<sup>3</sup> Courts increasingly have become cognizant of the constitutional rights of defendants.<sup>4</sup> The public's new awareness of the shortcomings of the system

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1. An examination of U.S. FED. BUREAU OF INVESTIGATION, UNIFORM CRIME REPORTS 49 (1975) reveals the following rates of serious offenses known to police per 100,000 inhabitants:

Year:	1960	1965	1968	1969	1970	1971	1972	1973	1974	1975
Rate:	1,887	2,449	3,370	3,680	3,985	4,165	3,961	4,154	4,850	5,282

These statistics represent a dramatic 179.9% increase over the fifteen year period. It is worth noting that for national reporting purposes, the figures cover only the more serious crimes of murder, forcible rape, robbery, aggravated assault, burglary, larceny-theft, and motor vehicle theft. *Id.* at 49 n.2. The lesser crimes, in the millions, go unreported. R. CLARK, *CRIME IN AMERICA* 48 (1971).

2. See, e.g., Chappel, Geis & Hardt, *Explorations in Deterrence and Criminal Justice*, 8 CRIM. L. BULL. 514 (1972) (proposals for research on deterrence); Matthews, *Cities Can Control Crime*, 54 CHI. B. REC. 83 (1972); Schoenfeld, *Psychoanalysis, Criminal Justice Planning and Reform, and the Law*, 7 CRIM. L. BULL. 313 (1971); cf. National Commission on the Causes and Prevention of Violence, *Final Report*, 34 MODERN L. REV. 75 (1971). See generally Symposium—*Perspectives on Innovation and Reform in Criminal Justice*, 64 J. CRIM. L. & C. 139 (1973).

3. See Byrn, *Urban Law Enforcement: A Plea From the Ghetto*, 5 CRIM. L. BULL. 125 (1969) (NAACP proposal to decrease the crime rate in the ghetto through greater police protection, severe mandatory sentences for certain offenses, and increased public awareness); Lombard, *Some Consequences of the Criminal Justice Revolution*, 56 GEO. L.J. 645 (1968) (protection of defendants vis-à-vis efficiency of law enforcement); Thornburgh, *Are We Really Serious About the Crime Problem?*, 31 U. PITT. L. REV. 587 (1970) (need for a more rational approach to increasing crime problems through decriminalization, education, increased rehabilitation efforts, and reorganization of existing law enforcement units); Committee on Federal Legislation of the New York County Lawyer's Association, *Report*, 5 CRIM. L. BULL. 137 (1969) (recommending legislation to strengthen fairness and effectiveness in law enforcement); *Roles and Responsibilities in Crime Prevention: A Symposium*, 7 AM. CRIM. L.Q. 66 (1969).

4. See, e.g., *Coolidge v. New Hampshire*, 403 U.S. 443 (1971) (unreasonable search of automobile); *Coleman v. Alabama*, 399 U.S. 1 (1970) (preliminary hearing a "critical stage" of the

and the deplorable condition of our correctional programs<sup>5</sup> has led to the development of alternative methods of rehabilitation.<sup>6</sup> In the wake of this reassessment, however, the crime victim often has been relegated to a position of subordinate priority, if not forgotten.<sup>7</sup> After the offender has been tried, convicted, and sentenced, the expense of the injury, in many instances,

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criminal process at which defendant is entitled to assistance of counsel); *Ashe v. Swenson*, 397 U.S. 436 (1970) (fifth amendment guarantee against double jeopardy embodies collateral estoppel as a constitutional requirement); *Sibron v. New York*, 392 U.S. 40 (1968) ("stop and frisk"); *Miranda v. Arizona*, 384 U.S. 436 (1966) (inadmissibility of pretrial confession obtained without informing defendant of fifth amendment guarantees); *Escobedo v. Illinois*, 378 U.S. 478 (1964) (denial of defendant's request for counsel during police interrogation violates sixth and fourteenth amendments); *Gideon v. Wainwright*, 372 U.S. 335 (1963) (right of an indigent defendant to have the assistance of counsel); *Mapp v. Ohio*, 367 U.S. 643 (1961) (exclusionary doctrine of fourth amendment applicable to state prosecutions). *But see* *United States v. Edwards*, 415 U.S. 800 (1974) (warrantless search and seizure of clothing as incident to lawful custodial arrest); *Gustafson v. Florida*, 414 U.S. 260 (1973) (warrantless search of person arrested for failure to have an operator's license); *United States v. Robinson*, 414 U.S. 218 (1973) (search incident to arrest for traffic violation); *Adams v. Williams*, 407 U.S. 143 (1972) ("stop and frisk" allowed when ample reason to fear for safety).

5. *See, e.g., Amos, The Philosophy of Corrections: Revisited*, 38 FED. PROBATION 43 (Mar., 1974); Clendenen, *What's the Matter with Corrections?*, 35 FED. PROBATION 8 (Sept., 1971) (correctional institution should not view itself as a hospital attempting to cure the "sick"); Keldgord & Norris, *New Directions for Corrections*, 36 FED. PROBATION 3 (Mar., 1972) (California correction system lacks, *inter alia*, an agreement on goals, a contemporary organizational structure, a public education program regarding corrections, and proper allocation of funds); National Council on Crime and Delinquency, *Correction in the United States*, 13 CRIME & DELIN. 1 (1967) (text of survey conducted for President's Commission on Law Enforcement and Administration of Justice); Rubin, *Needed—New Legislation in Correction*, 17 CRIME & DELIN. 392 (1971) (proposes legislation to provide substantive rights for ex-prisoners rather than allow uncontrolled exercise of judicial and administrative discretion); *Symposium—Sentencing and Corrections*, 11 AM. CRIM. L. REV. 1 (1972); *Symposium: The Purposes of Corrections—Directions for Improvement*, 6 U. SAN FRAN. L. REV. 1 (1971); Note, *And the Walls Came Tumbling Down*, 19 N.Y.L.F. 609 (1974) (predicts demise of punishment and prisons as a means of dealing with offenders); Note, *Courts, Corrections, and the Eighth Amendment Encouraging Prison Reform by Releasing Inmates*, 44 S. CAL. L. REV. 1060 (1971).

6. *See, e.g., Enomoto, Participation in Correctional Management by Offender Self-Help Groups*, 36 FED. PROBATION 36 (June, 1972); Hamilton, *Criminal Rehabilitation Should Be Our Top Priority*, 7 CRIM. L. BULL. 225 (1971) (coordination of private as well as public sectors to provide job opportunities and training); Murphy & Murphy, *College as a Parole Plan*, 35 FED. PROBATION 45 (Mar., 1971); Schoen, *PORT: A New Concept of Community-Based Correction*, 36 FED. PROBATION 35 (Sept., 1972) (live-in and community-based treatment program); Sterling & Harty, *An Alternative Model of Community Services for Ex-Offenders and Their Families*, 36 FED. PROBATION 31 (Sept., 1972) (follow-up services for ex-prisoners); Wenk & Frank, *Some Progress in the Evaluation of Institutional Programs*, 37 FED. PROBATION 30 (Sept., 1973); Williams & Fish, *Rehabilitation and Economic Self-Interest*, 17 CRIME & DELIN. 406 (1971) (proposal that release of prisoners be dependent upon achievement of certain goals which system will then credit toward total release "price").

7. In a notable project in 1975, however, the Governor's Commission on Crime Prevention and Control granted awards totaling \$162,773 for both a Minnesota program for victims of sexual assault and for a research project on remedies for victims of crime. *See* 3 MINN. CRIME PREV. & CONTROL 4-5 (June, 1975) (corrections projects S-24 and S-17).

is borne by the crime victim alone.<sup>8</sup>

The victim's plight is revealed by a survey of the traditional means of recovery.<sup>9</sup> A civil action for damages against the offender is often unrealistic. It requires the apprehension of the offender, which is estimated to occur in connection with only one of every five reported crimes.<sup>10</sup> Furthermore, the offender is often judgment-proof,<sup>11</sup> or his resources may be depleted by defending both criminal and civil actions, paying fines, and supporting dependents while incarcerated.<sup>12</sup> In addition, a high percentage of crime victims are members of lower income groups<sup>13</sup> who are simply unable to bear the expense of civil litigation.

8. See Comment, *Rehabilitation of the Victims of Crime: An Overview*, 21 U.C.L.A.L. REV. 317 (1973).

9. See generally Comment, *supra* note 8, at 319-47. The view that enforcement of the criminal laws should be concerned with the individual interests of the victims as well as the public welfare is outside the mainstream of classical theories of criminal law. It has, however, drawn support from such dissimilar sources as Jeremy Bentham and Arthur J. Goldberg. See J. BENTHAM, *THEORY OF LEGISLATION* 317-18 (1864); Goldberg, *Equality and Governmental Action*, 39 N.Y.U.L. REV. 205, 224 (1964).

One alternative which has been advanced is the development of direct civil responsibility by the state to the victims of crime by the creation or extension of a tort duty to protect citizens from victimization. See Kutner, *Crime-Torts: Due Process of Compensation for Crime Victims*, 41 NOTRE DAME LAW. 487 (1966) ("crime-tort" provides a pedagogical framework for a crime victim's action against a governmental unit); cf. *Riss v. City of New York*, 22 N.Y.2d 579, 240 N.E.2d 860, 293 N.Y.S.2d 897 (1968) (city not liable in tort for failure to provide police protection upon request). The greatest obstacle to the development of such an action, of course, is the doctrine of sovereign immunity. Over the last decade, however, courts have become increasingly disrespectful of the doctrine. See, e.g., *Nieting v. Blondell*, \_\_\_\_ Minn. \_\_\_\_, 235 N.W.2d 597 (1975) (state of Minnesota tort immunity abolished with respect to tort claims arising on or after August 1, 1976). In response to *Nieting* the Minnesota legislature in 1976 enacted the Minnesota Tort Claims Act regulating suit against the state. See Act of Apr. 20, 1976, ch. 331, § 33, [1976] Minn. Sess. Laws 1293-97, to be codified as MINN. STAT. § 3.736.

Another alternative has been legislation permitting recovery by victims of mob crime. See, e.g., Note, *Municipal Tort Liability: Statutory Liability of Municipalities for Damage Caused by Mobs and Riots*, 50 CORNELL L.Q. 699 (1965); Legislation, *Communal Liability for Mob Violence*, 49 HARV. L. REV. 1362 (1936).

10. See U.S. BUREAU OF THE CENSUS, *STATISTICAL ABSTRACT OF THE UNITED STATES* 157 (96th ed. 1975) (19.1 arrests per 100 offenses in 1973); U.S. FED. BUREAU OF INVESTIGATION, *UNIFORM CRIME REPORTS* 176 (1974) (19.4 arrests per 100 offenses in 1974).

11. Mueller, *Compensation for Victims of Crime: Thought Before Action*, 50 MINN. L. REV. 213, 216 (1965). See 1 L. SILVERSTEIN, *DEFENSE OF THE POOR IN CRIMINAL CASES IN AMERICAN STATE COURTS* 7-8 (1965) (43 percent of felons indigent for purpose of appointing counsel, 56 percent unable to raise bail); Goldberg, *supra* note 9, at 224 n.95 (1964) (assets of accused may be exhausted by attorneys' fees); Lamborn, *Remedies for the Victims of Crime*, 43 S. CAL. L. REV. 22, 38 (1970).

12. Comment, *supra* note 8, at 319.

13. Approximately 54 percent of the crime victims in 1965 had incomes less than \$6,000. See U.S. BUREAU OF THE CENSUS, *STATISTICAL ABSTRACT OF THE UNITED STATES* 145 (93d ed. 1972). A more recent study suggests that the victimization rates in 1972 were even greater in low income groups. See LAW ENFORCEMENT ASSISTANCE ADMINISTRATION, U.S. DEP'T OF JUSTICE, *CRIME IN EIGHT AMERICAN CITIES* 12-19, 21-28 (Advance Report 1974) (sample drawn from Atlanta, Baltimore, Cleveland, Dallas, Denver, Newark, Portland, and St. Louis).

A second alternative means of recovery, court-ordered restitution, suffers additional infirmities. Although the use of restitution—a supervised program of repayment by the offender to the victim—is sanctioned in most jurisdictions as a condition to probation or other sentence,<sup>14</sup> it is almost exclusively ordered only in those cases involving property crimes.<sup>15</sup> As with civil litigation, the impecunious position of the defendant often renders restitution impractical.<sup>16</sup> Suggestions have been made that offenders use their prison wages to meet restitution payments.<sup>17</sup> Although most inmates are employed, the majority are generally paid nominal wages.<sup>18</sup> Moreover, restitution from prison earnings diverts resources which could be used to support the families or dependents of prisoners.<sup>19</sup> Finally, objections have been raised regarding the constitutionality of the use of restitution. It is contended that restitution as a condition of probation or parole operates to free the wealthy from prison sentences, thereby violating equal protection guarantees.<sup>20</sup> In addition, if failure to comply with the requirements of restitution results in incarceration, it might subject an offender to imprisonment for debt.<sup>21</sup>

14. Note, *Use of Restitution in the Criminal Process: People v. Miller*, 16 U.C.L.A.L. REV. 456, 460 (1969). But see Comment, *Compensation for Victims of Crime*, 33 U. CHI. L. REV. 531, 533 (1966). The victim's civil action is unaffected by conditioning probation on restitution, but such payments would probably offset the award of civil damages. Jacob, *Reparation or Restitution by the Criminal Offender to his Victim: Applicability of an Ancient Concept in the Modern Correctional Process*, 61 J. CRIM. L.C. & P.S. 152, 156 (1970).

15. Schultz, *The Violated: A Proposal to Compensate Victims of Violent Crime*, 10 ST. LOUIS U.L.J. 238, 243-44 (1965); Wolfgang, *Victim Compensation in Crimes of Personal Violence*, 50 MINN. L. REV. 223, 229 (1965). For a discussion of the use of reparations and restitution in the modern criminal justice system, see Jacob, *supra* note 14.

16. In addition, some commentators feel that restitution, instead of evoking in the offender a sense of responsibility or alleviating feelings of guilt, may well increase his resentment and aggressiveness. Silving, Book Review, 52 J. CRIM. L.C. & P.S. 96, 98-99 (1961).

17. See, e.g., Mueller, *supra* note 11, at 221; Wolfgang, *supra* note 15, at 230 n.25.

18. Of those inmates in Minnesota who are employed, the majority earn from \$1.50 to \$3.50 per day in prison industries. A small number work in private industry projects, earning \$6,000 to \$10,000 per year. Letter from Stanley Wood, Director of Private Industry, Minn. Dep't of Corrections to William Mitchell Law Review, Oct. 8, 1976.

19. This unfairly burdens the family and dependents of the offender and leads to further resentment of the system. H. EDELHERTZ & G. GEIS, PUBLIC COMPENSATION TO THE VICTIMS OF CRIME 6 (1974). See Schultz, *supra* note 15, at 244. But see S. SCHAFER, RESTITUTION TO VICTIMS OF CRIME 125 (1960); Eglash, *Creative Restitution: Some Suggestions for Prison Rehabilitation Programs*, 20 AM. J. CORRECTION 20 (Nov.-Dec., 1958).

20. Note, *New York Crime Victims Compensation Board Act: Four Years Later*, 7 COLUM. J.L. & SOC. PROB. 25, 46 (1971). See also Schafer, *Restitution to Victims of Crime—An Old Correctional Aim Modernized*, 50 MINN. L. REV. 243, 252 (1965).

21. Schultz, *supra* note 15, at 244; Comment, *supra* note 8, at 324-25; cf. *Ex parte Morse*, 26 Ariz. 450, 454, 226 P. 537, 539 (1924) (dictum) (incarceration of employer for inability to pay wages constitutes imprisonment for debt); *People v. Holder*, 53 Cal. App. 45, 50, 199 P. 832, 834 (Dist. Ct. App. 1921) (California constitution prohibits imprisonment of a contractor for breach of agreement to pay debts). But cf. *Martin v. People*, 69 Colo. 60, 61, 168 P. 1171, 1171 (1917) (incarceration for willful failure to support child is not imprisonment for debt); *Ex parte Merrill*, 200 Mich. 244, 249, 167 N.W. 30, 32 (1918) (incarceration for refusal to perform a court

Another alternative is to return offenders to the community where they can secure employment, thereby enabling them to compensate the crime victim.<sup>22</sup> Many states, including Minnesota,<sup>23</sup> have implemented halfway house programs and other community treatment centers.<sup>24</sup> This approach, like court-ordered restitution, is apparently more feasible where only property loss is involved<sup>25</sup> because less difficulty is encountered in arriving at a repayment plan which is mutually agreeable to both the victim and the offender.<sup>26</sup>

A final alternative is privately-obtained insurance.<sup>27</sup> However, recognizing that a high proportion of crimes occur in lower income neighborhoods<sup>28</sup> and

order requiring transfer of monies is not imprisonment for debt). The Minnesota constitution provides in article 1, § 12 that "[n]o person shall be imprisoned for debt in this state . . . ." The Minnesota Supreme Court has construed the term "debt" to mean "an obligation to pay money for something due and owing from one to another arising out of a contract, express or implied." See *Clausen v. Clausen*, 250 Minn. 293, 301, 84 N.W.2d 675, 681 (1957). Thus, it would appear that if the offender and the victim entered into an agreement for restitution, failure to pay would constitute a debt for which the offender could not be imprisoned.

22. These programs not only assist the offender in finding employment, but may also continue education and training programs started in correctional institutions. G. KILLINGER & P. CROMWELL, JR., *CORRECTIONS IN THE COMMUNITY: ALTERNATIVES TO IMPRISONMENT* 137 (1974). Employment counseling specialists in federal prerelease guidance centers aid the offenders in procuring employment. THE PRESIDENT'S COMM'N ON LAW ENFORCEMENT & ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: CORRECTIONS 41 (1967).

23. See, e.g., GOVERNOR'S COMM'N ON CRIME PREVENTION AND CONTROL, RESIDENTIAL COMMUNITY CORRECTIONS PROGRAMS (1975).

24. See G. KILLINGER & P. CROMWELL, JR., *supra* note 22, at 130-31 (28 states maintain some type of program for felons prior to release on parole). Maryland, Washington, and New York have initiated work release programs by statute. Comment, *supra* note 8, at 328 n.52.

25. Many victims are more interested in restoring their property than in incarcerating the offender. Frequently, the offender will suggest to the victim that he will restore the property if the victim will refrain from prosecuting. Wolfgang, *supra* note 15, at 229 n.21.

26. Where the only damage has been to property and not to the victim himself, the atmosphere is more conducive to negotiation. See also Comment, *supra* note 8, at 323 (property damage more easily measured than physical or emotional injury).

27. In the absence of express exclusion from coverage under the policy, damages or death caused by intentional acts or acts in violation of law are generally compensable under life, accident, medical, and other personal insurance policies. See 1A J. APPLEMAN, *INSURANCE LAW AND PRACTICE* §§ 486, 511 (rev. ed. 1965). See generally Starrs, *A Modest Proposal to Insure Justice for Victims of Crime*, 50 MINN. L. REV. 285, 301-05 (1965). See also INSTITUTE OF LIFE INSURANCE, *LIFE INSURANCE FACT BOOK* 88 (1975) (.8% of life insurance policy holders die from homicide).

The Minnesota court has allowed recovery under a life insurance policy even where the insured was allegedly committing a felony at the time of his death. *Domico v. Metropolitan Life Ins. Co.*, 191 Minn. 215, 217-20, 253 N.W. 538, 540 (1934) ("The omission of an exception in the instant policy from liability if insured should be killed while committing a felony by the same reasoning precludes exemption of liability here.").

28. U.S. PRESIDENT'S COMM'N ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: CRIME AND ITS IMPACT—AN ASSESSMENT 80 (1967). See also U.S. LAW ENFORCEMENT ASSISTANCE ADMINISTRATION, *CRIMES AND VICTIMS: A REPORT OF THE DAYTON-SAN JOSE PILOT SURVEY OF VICTIMIZATION* 100-01 (1974).

to members of lower income groups,<sup>29</sup> the high premiums for such coverage render this alternative to be of little practical significance.<sup>30</sup>

The inadequacy of these more traditional means of recovery has led to the conclusion that the only feasible method by which crime victims can be compensated is through public assumption of the responsibility. The reasons offered in justification of the use of public funds include the failure of those entrusted with law enforcement to prevent crime,<sup>31</sup> the negligence of public officers,<sup>32</sup> and the denial of equal protection to crime victims by failing to secure for them the peace and welfare enjoyed by the general public.<sup>33</sup> Regardless of the theory under which publicly-funded programs proceed, the root of public crime victim compensation is the "humanitarian desire to alleviate the suffering of victims of violence."<sup>34</sup>

In 1967, California enacted the first crime victims reparations program in the United States.<sup>35</sup> Several other states have since followed California's lead,<sup>36</sup> including Minnesota in 1974.<sup>37</sup> This Note will discuss the provisions of Minnesota's Crime Victims Reparations Act, the policies which should influ-

29. U.S. PRESIDENT'S COMM'N ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, *supra* note 28, at 15; note 13 *supra*.

30. See Lamborn, *supra* note 11, at 42-43. For example, in 1969, 37 percent of adults with less than \$5,000 family income had no life insurance. INSTITUTE OF LIFE INSURANCE, LIFE INSURANCE FACT BOOK 12 (1974). In 1967, 65 percent of the persons under 65 with family income of less than \$3,000 were without hospitalization insurance. Also, 43 percent of the persons under 65 with family incomes between \$3,000 and \$5,000 had no hospitalization coverage. Reed & Carr, *Private Health Insurance in the United States, 1967*, 32 SOCIAL SECURITY BULL. 8 (Feb., 1969).

31. Comment, *supra* note 8, at 333 & n.75. First propounded by Jeremy Bentham, this argument has been offered in favor of allowing a crime victim to bring a civil action against the government for breach of both contractual and tort duties. See Kutner, *supra* note 9, at 487. It is generally admitted, however, that a state cannot prevent all crimes.

32. Comment, *supra* note 8, at 334 & n.77.

33. *Id.* at 335.

34. Goldberg, *Preface to Symposium: Governmental Compensation for Victims of Violence*, 43 S. CAL. L. REV. 1, 1 (1970).

35. See Act of Aug. 30, 1967, ch. 1546, § 1, [1967] Cal. Sess. Laws 3707-09. Two years later, California enacted a "good Samaritan" statute providing compensation to private citizens who incurred injury, death, or damage in preventing a crime, apprehending a criminal, or rescuing another in immediate danger of injury or death. See Act of Sept. 4, 1969, ch. 1431, § 3.5, [1969] Cal. Sess. Laws 2938-39.

36. Prior to passage of the Minnesota Act eight states had enacted crime victims reparations legislation. See ALASKA STAT. §§ 18.67.010-.180 (1974), *as amended*, (Supp. 1975); HAWAII REV. STAT. §§ 351-1 to -70 (1968), *as amended*, (Supp. 1975); ILL. ANN. STAT. ch. 70, §§ 71-84 (Smith-Hurd Supp. 1976); LA. REV. STAT. ANN. §§ 46:1801 to :1821 (West Supp. 1976); MD. ANN. CODE art. 26A, §§ 1-17 (1973), *as amended*, (Supp. 1975); MASS. GEN. LAWS ANN. ch. 258A, §§ 1-7 (Supp. 1976); N.J. STAT. ANN. §§ 52:4B-1 to -21 (Supp. 1976); N.Y. EXEC. LAW §§ 620-35 (McKinney 1972), *as amended*, (McKinney Supp. 1975). Subsequent to the passage of the Minnesota Act six states enacted crime victims reparations legislation. See DEL. CODE ANN. tit. 11, §§ 9001-14 (Supp. 1975); N.D. CENT. CODE §§ 65-13-01 to -20 (Supp. 1975); Act of June 6, 1976, act 139, [1976] Pa. Legis. Serv. 273-79 (West), *to be codified as* PA. STAT. ANN. tit. 71, §§ 180-7 to -7.15; VA. CODE ANN. §§ 19.2-368.1 to .18 (Supp. 1976); WASH. REV. CODE



ence its development, and the difficulties which may be encountered in its operation.

## II. AN OVERVIEW OF THE MINNESOTA ACT

The Minnesota Crime Victims Reparations Act<sup>38</sup> indemnifies victims of crime or their dependents for economic loss incurred as a direct result of personal injury or death which is in turn a direct result of a crime.<sup>39</sup> The Act also permits recovery for economic loss incurred as a direct result of a good

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ANN. §§ 7.68.010-910 (Supp. 1976); Act of June 6, 1976, ch. 344, [1976] Wis. Legis. Serv. 1619-24 (West), *to be codified as* WIS. STAT. §§ 949.01-18. Rhode Island passed a reparations statute which will become effective 120 days after enactment of federal reparations legislation. *See* R.I. GEN. LAWS ANN. §§ 12-25-1 to -12 (Supp. 1975). In 1968, the territory of the Virgin Islands enacted the Virgin Islands Criminal Victims Compensation Act. *See* V.I. CODE ANN. tit. 34, §§ 151-77 (Supp. 1975).

37. Minnesota Crime Victims Reparations Act, Act of Apr. 11, 1974, ch. 463, [1974] Minn. Sess. Laws 1132-40, *codified as* MINN. STAT. §§ 299B.01-.16. Prior to enactment of the Crime Victims Reparations Act, compensation through the state claims commission was available under a "good Samaritan" statute to innocent persons injured and dependents of such persons killed as a result of an attempt to help a victim of crime, an attempt to apprehend or arrest a suspected criminal, or an attempt to aid a police officer. Act of June 6, 1969, ch. 1018, § 1, [1969] Minn. Sess. Laws 2045, *codified as* MINN. STAT. § 3.74(7). In 1971 S.F. 226, 67th Minn. Legis. (1971) was introduced in the Minnesota legislature to allow innocent victims of crime to apply to the state claims commission for compensation. The legislature failed to approve the amendment, undoubtedly due to the complete lack of claims under the "good Samaritan" statute. *See Tape of Joint Meeting on S.F. 884 Before the Minnesota Senate Comm. on the Judiciary and the Minnesota House Comm. on Crime Prevention & Corrections* (Nov. 13, 1973).

Between 1971 and 1973, the idea of compensating crime victims through a state-funded program was extensively considered. While the desirability of having a crime victims reparations program provided little controversy, formal legislative consideration of a program was postponed until 1973 due to concern over the program's potential cost and the appropriate procedural mechanisms. *See* MINN. SENATE JUDICIARY COMMITTEE'S SUBCOMMITTEE ON CRIMINAL LAW, INTERIM ACTIVITIES & RECOMMENDATIONS 5 (Nov., 1971-Dec., 1972). Several bills proposing a compensation program were introduced in the 1973 Session. S.F. 530, 68th Minn. Legis., 1st Sess. (1973) included a need test and gave jurisdiction to the claims committee of the legislature to process claims. S.F. 549, 68th Minn. Legis., 1st Sess. (1973) and S.F. 1089, 68th Minn. Legis., 1st Sess. (1973) were very similar to S.F. 530 except they limited indemnity to medical expenses alone. S.F. 884, 68th Minn. Legis., 1st Sess. (1973) eliminated the need test and provided for settlement of claims by the attorney general and trial of contested cases in state district court. During the following year the bills were studied by legislative committees, which expressed a concern that administrative expenses be kept at a minimum so a substantial amount of the appropriations would directly reach the innocent victims of crime. *See, e.g., Tape of Meeting on S.F. 884 Before the Subcomm. on Criminal Law & Corrections of the Minnesota Senate Comm. on the Judiciary* (Oct. 9, 1973); *Tape of Joint Meeting on S.F. 884 Before the Minnesota Senate Comm. on the Judiciary and the Minnesota House Comm. on Crime Prevention & Corrections* (Nov. 13, 1973); *Tape of Meeting on S.F. 884 Before the Minnesota Senate Comm. on the Judiciary* (Feb. 14, 1974). When H.F. 452 was finally enacted, the legislature had established a reparations board to administer the program rather than using the courts or the state claims commission.

38. The Act became effective July 1, 1974. *See* Act of Apr. 11, 1974, ch. 463, § 17, [1974] Minn. Sess. Laws 1140.

39. *See* MINN. STAT. §§ 299B.02(7), (9) (1974).

faith effort to prevent a crime or to apprehend a person suspected of engaging in a crime.<sup>40</sup> The Act is analogous to an insurance policy for the benefit of victims of crimes committed within this state who otherwise cannot be adequately compensated.

*A. Compensable Crime.* To constitute a "compensable crime," the conduct of the offender must be at least a misdemeanor under state statute,<sup>41</sup> pose a substantial threat of personal injury or death,<sup>42</sup> and occur within the state.<sup>43</sup> It is not necessary that the offender be prosecuted or convicted;<sup>44</sup> nor is it necessary that he have the capacity under state law to commit the crime.<sup>45</sup> Excluded from the definition of "compensable crime" is conduct arising out of the use of a motor vehicle, aircraft, or watercraft, unless the offender intends to cause personal injury or death, or the vehicle or craft was being used in the commission of a felony and was the proximate cause of the victim's injury or death.<sup>46</sup>

*B. Eligibility.* The victim, his dependents,<sup>47</sup> his estate, those who have furnished him with certain necessary medical products, services, or accommodations, and their guardians, conservators, or agents are eligible claimants under the Act.<sup>48</sup> Eligibility further depends on each claimant having incurred economic loss,<sup>49</sup> reporting the crime to police within five days of its occurrence or within five days of the time when a report could reasonably have been made,<sup>50</sup> fully cooperating with the police,<sup>51</sup> filing the claim within a year of the victim's injury or death or within a year of the time the claim could

40. *See id.* § 299B.02(9).

41. *Id.* § 299B.02(5)(a)(iii) requires that the conduct be "included within the definition of 'crime' in *Minnesota Statutes 1971*, Section 609.02, Subdivision 1, or would be included within that definition but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state." MINN. STAT. § 609.02, subd. 1 (1974) defines crime as "conduct which is prohibited by statute and for which the actor may be sentenced to imprisonment, with or without a fine." This would of course exclude those who commit petty misdemeanors because they are subject only to fines and do not face possible incarceration. *Id.* § 609.02, subd. 4a.

42. MINN. STAT. § 299B.02(5)(a)(ii) (1974).

43. *Id.* § 299B.02(5)(a)(i). However, it is not necessary that the victim be a resident of Minnesota. *See id.* § 299B.02(9).

44. *Id.* § 299B.02(5)(b).

45. *Id.* § 299B.02(5)(a)(iii). Capacity to commit a crime is affected, for example, by age, *id.* § 609.055 (children under age 14 are incapable of committing a crime); intoxication, *id.* § 609.075 (capability of committing a crime requiring specific intent); and mental illness, *id.* § 611.026.

46. *Id.* § 299B.02(5)(c).

47. "Dependent" is defined as "any person who was dependent upon a deceased victim for support at the time of the crime." *Id.* § 299B.02(6).

48. *Id.* § 299B.03, subd. 1 (Supp. 1975).

49. *Id.* " 'Economic loss' means actual economic detriment incurred as a direct result of injury or death." *Id.* § 299B.02(7) (1974).

50. MINN. STAT. § 299B.03, subd. 2(a) (1974).

51. *Id.* § 299B.03, subd. 2(b).

have been made,<sup>52</sup> and having a claim in excess of \$100.<sup>53</sup> The offender or his accomplice, his spouse, parent, child, brother or sister, and any one living in the household of the offender or his accomplice are excluded from eligibility.<sup>54</sup> Eligibility may also be denied where an award would unjustly benefit the offender or an accomplice.<sup>55</sup>

*C. Recovery.* The Minnesota Act provides compensation for a broader range of losses than the act of any other state. Compensation for reasonable expenses incurred for medical and other specified therapeutic care which is necessary to the victim's rehabilitation is provided for in the Act,<sup>56</sup> as is compensation for loss of income, and for child care and household services to substitute for those normally provided by the victim.<sup>57</sup> In the event of the victim's death, the Act similarly provides compensation for substitute child care and household services,<sup>58</sup> the cost of medical and rehabilitative services for which the victim's survivors or estate are liable,<sup>59</sup> as well as for loss of support and reasonable funeral expenses.<sup>60</sup> The amount of reparations recoverable for a single injury or death is limited to ten thousand dollars.<sup>61</sup> The

52. Act of Apr. 8, 1976, ch. 193, [1976] Minn. Sess. Laws 657, amending MINN. STAT. § 299B.03, subd. 2(e) (1974).

53. MINN. STAT. § 299B.03, subd. 2(f) (1974).

54. *Id.* § 299B.03, subds. 2(c)-(d). For all claimants other than the offender or his accomplice, the exclusion may be modified at the discretion of the Crime Victims Reparations Board where justice requires. *Id.* § 299B.03, subd. 2(c).

55. *Id.* § 299B.03, subd. 2(d).

56. *See id.* §§ 299B.02(7)(a)(i)-(ii).

57. *Id.* §§ 299B.02(7)(a)(iii)-(iv).

58. *Id.* § 299B.02(7)(b)(iv).

59. *Id.* § 299B.02(7)(b)(ii) includes in the description of economic loss reasonable expenses for certain medical services incurred prior to the victim's death and for which the victim's estate or survivors are liable.

60. *Id.* §§ 299B.02(7)(b)(i), (iii). The Crime Victims Reparations Board has established a maximum of \$1,850 (minus the \$100 deduction required under *id.* § 299B.04(2)) as the amount which can be recovered for funeral expenses. Minutes of Crime Victims Reparations Board, Nov. 19, 1974, at 2. This determination was based on a survey of area funeral directors and the Association of Funeral Directors. Letter from Samuel L. Scheiner, Executive Director of the Minnesota Crime Victims Reparations Board to William Mitchell Law Review, Sept. 1, 1976. The amount was thought to be a more realistic amount than the \$1,000 burial allowance under the Workers' Compensation Act, *codified at id.* § 176.111, subd. 18. Letter from Samuel L. Scheiner, Executive Director of the Minnesota Crime Victims Reparations Board to William Mitchell Law Review, Aug. 24, 1976.

61. MINN. STAT. § 299B.04(3) (1974). When H.F. 452, 68th Minn. Legis., 2d Sess. (1974) was reported on by the Committee on Appropriations, a \$10,000 limit was proposed. *See* 4 MINN. H.R. JOUR. 6204 (1974). Six days later the Committee on Rules and Administration recommended amendment of H.F. 452 to comply with S.F. 884, 68th Minn. Legis., 2d Sess. (1974) and substitution of H.F. 452 for S.F. 884. This recommendation limited recovery to \$15,000 plus attorneys' fees. *See* 4 MINN. S. JOUR. 5603, 5607 (1974). Subsequently, the conference committee recommended amendment of H.F. 452 to include a \$10,000 limitation and to delete the provision for attorneys' fees. *See* 4 MINN. S. JOUR. 7075 (1974). This version of the bill was read a third time and passed by the Senate and House of Representatives. *See* 4 MINN. S. JOUR. 6149-56 (1974); 4 MINN. H.R. JOUR. 7072-80 (1974).

award will be reduced by any amount received from "collateral sources,"<sup>62</sup> by the first one hundred dollars of loss,<sup>63</sup> and by an amount commensurate with the contributory misconduct of the victim or other claimant.<sup>64</sup> The award is exempt from execution or attachment, except by those who have provided services or products in connection with the victim's injury or death.<sup>65</sup> These suppliers may also be paid directly by the Board.<sup>66</sup>

*D. Administration and Claims Procedure.* The Act is administered by the Crime Victims Reparations Board. The Board, composed of three members appointed by the governor to six-year terms,<sup>67</sup> in turn employs an Executive Director to handle the day-to-day operations. The filing of a claim under the Act is straightforward. To avoid intimidation of potential claimants, only two simple forms are utilized,<sup>68</sup> which include an authorization by the claimant to release all records and information relating to the incident by hospitals, doctors, and law enforcement agencies. In contrast to programs in other states,<sup>69</sup> the burden is then on the Board to obtain from the claimant and other persons all information reasonably related to the validity of the claim.<sup>70</sup>

When a claim is filed with the Board, it is assigned by the chairman to one of the members for investigation and, if necessary, a hearing. A determination is made whether the claim should be paid and, if so, in what amount.<sup>71</sup> A written report, stating the reasons for the investigating member's decision, is then filed with the Board.<sup>72</sup> A single member's decision may be appealed to

62. MINN. STAT. § 299B.04(1) (1974). *Id.* § 299B.02(4) defines "collateral source" as a source of benefits or advantages for economic loss which the victim has received or which is readily available to him. Collateral sources of benefits include the offender, the government, social security, workers' compensation, wage continuation plans, insurance, and gifts. *Id.*

63. *Id.* § 299B.04(2).

64. *Id.*

65. *Id.* § 299B.09.

66. *Id.*

67. *Id.* § 299B.05. Of the three, one must be a member of the Minnesota bar and another must be a licensed medical or osteopathic physician. *Id.* § 299B.05, subd. 1.

68. A claim is initiated by filing a one-page "Preliminary Claim Form" containing information about the claimant, a description of the incident, and the name of the law enforcement agency to which it was reported. 9 MINN. REGS., REPAR. BOARD RB4-A (1974); Minn. Dep't of Public Safety Form No. 8001 (Oct., 1974). This form is relied upon by the Board in determining the initial validity of the claim and whether the statutory requirements have been met. The claimant must then complete a more detailed "Supplementary Form," in which he specifies the economic loss incurred and possible collateral sources of recovery. Minn. Dep't of Public Safety Form No. 8004 (Mar., 1976).

69. Other states place a significant burden on the claimant to supply all of the medical reports, receipts, and other materials necessary to support his claim. In Maryland, for example, the prospective claimant is advised to submit with the claim form all medical reports and receipts in support of the claim. 6 MARYLAND CRIMINAL INJURIES COMPENSATION BOARD, ANN. REP. 8 (1975). Similarly, in Alaska the claimant must supply doctors' reports, hospital reports, and employment information before any action will be taken on his claim. 2 ALASKA VIOLENT CRIMES COMPENSATION BOARD, ANN. REP. 10 (1975).

70. 9 MINN. REGS., REPAR. BOARD RB6-(a) (1974).

71. MINN. STAT. § 299B.07 (1974).

72. *Id.* § 299B.07, subd. 5. The average length of time required for finalizing a claim ranges

the full Board by either the claimant or another Board member within thirty days of receipt or filing of the decision.<sup>73</sup> Contested cases are subject to judicial review in compliance with the Minnesota Administrative Procedure Act.<sup>74</sup> Upon its own motion, or upon motion of the claimant or the attorney general, the Board may grant an emergency award in cases of hardship, and may reconsider any decision granting or denying reparations or determining their amount.<sup>75</sup> The claimant bears the burden of proof and is required to establish that the requirements for compensation have been met by a preponderance of the evidence.<sup>76</sup> But the final conviction of the offender is conclusive proof of the commission of the crime.<sup>77</sup>

*E. Current Operations.* Most claims to date have been for injuries or death as a result of an assault, homicide, or mugging.<sup>78</sup> Approximately forty percent of the claims have been denied, usually because the claim has been abandoned.<sup>79</sup> Between July 1, 1974, and June 30, 1976, awards in the amount of \$334,365.51 have been made, with individual awards averaging approximately \$1,200.<sup>80</sup> The initial fiscal year appropriation of \$100,000 was doubled for each of the following two years.<sup>81</sup> In early January, 1976, however, the

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from two and one-third months for a mugging to six months for arson. Minnesota Crime Victims Reparations Board, Register of Cases Handled from July 1, 1974, through June 30, 1976, table III [hereinafter cited as Board Register]. These averages include delays caused by slow return of information by the claimant and investigation of the claim by a Board member. The Board may delay the process further by postponing or suspending proceedings while criminal proceedings are pending, since necessary police records and witness statements will be unavailable. MINN. STAT. § 299B.06, subd. 2(e) (1974). The Board may mitigate the effect of any delay by using its power to grant emergency awards. *Id.* § 299B.06, subd. 2(g). These awards may be granted where it is likely that an award will be made and where undue hardship would result if immediate payment were not made. *Id.* But the Board has decided to grant emergency awards to cover only actual loss of income. Minutes of Crime Victims Reparations Board, Jan. 28, 1975, at 2; Letter from Samuel L. Scheiner, Executive Director of the Minnesota Crime Victims Reparations Board to William Mitchell Law Review, Aug. 24, 1976.

73. *Id.* § 299B.08, subds. 1-2.

74. MINN. STAT. § 299B.08, subd. 3 states that all claims shall be treated by the Board as contested cases within the meaning of the Administrative Procedure Act, *codified at* *Id.* §§ 15.01-.43. MINN. STAT. § 15.042 entitles any person aggrieved by a final decision in a contested case to judicial review.

75. *Id.* § 299B.06, subds. 2(g)-(h). The right to move for a rehearing may be exercised until lost by appeal, the granting of a writ of certiorari, or until a reasonable time has run. 9 MINN. REGS., REPAR. BOARD RB113-(a) (1974).

76. MINN. STAT. § 299B.03, subd. 1 (1974).

77. *Id.* § 299B.02(5)(b). If an application for rehearing, appeal, or petition for certiorari is pending, or a new trial or rehearing has been ordered, a conviction is not conclusive evidence that a crime was committed. *Id.*

78. Board Register, *supra* note 72, table II.

79. *Id.* table IV (228 claims denied; 100 claims treated as abandoned for failure to furnish information "for a long period of time"). Claims were also frequently denied because they failed to exceed the \$100 deductible, were grounded on excepted property loss, or occurred before the effective date of the Act. *Id.*

80. *Id.* table V. The total amount paid, however, was reduced by \$1,939.87 in refunds to the Board because of overpayments or claimants' subsequent recovery from collateral sources. *Id.*

81. See Act of May 30, 1975, ch. 204, § 31, subd. 8, [1975] Minn. Sess. Laws 571.

Board put a moratorium on the making of awards because the reparations fund had been exhausted. The 1976 session of the legislature supplemented the appropriation in the amount of \$200,000.<sup>82</sup>

### III. ANALYSIS OF THE ACT

#### A. *An Approach to Construing the Act*

The Crime Victims Reparations Act contains no statement of policy or other guide to assist in its construction.<sup>83</sup> There are, however, several considerations which are helpful in this pursuit. First, the Act is remedial in nature and thus should be accorded a liberal construction<sup>84</sup> in favor of the remedy provided by law, or in favor of those entitled to the benefit of the statute.<sup>85</sup> In addition, the absence of stringent, technical requirements in the Act emphasizes the legislative intention that the process be free of overly-legalistic procedures.<sup>86</sup>

The low initial appropriation<sup>87</sup> should not be viewed as evidence of a legis-

82. Act of Apr. 20, 1976, ch. 331, § 13, [1976] Minn. Sess. Laws 1286 (\$100,000 appropriation for the year ending June 30, 1976; \$100,000 appropriation for the year ending June 30, 1977).

83. The bill which eventually became the Minnesota Crime Victims Reparations Act had a declaration of public policy at the time it was originally introduced. See H.F. 452, 68th Minn. Legis., 1st Sess. § 1 (1973). It read:

It is hereby declared that it serves a public purpose and is of benefit to the state to indemnify those needy residents of the state of Minnesota for medical expenses actually incurred as a direct result of a violent crime, and those needy domiciliaries of Minnesota who are injured as a consequence of an act committed in another state or jurisdiction, when such act, if committed in Minnesota, would have been a crime under the laws of this state; provided that the victim of such crime shall not have insurance coverage or private resources to cover such medical expenses.

Two Senate bills, S.F. 549, 68th Minn. Legis., 1st Sess. § 1 (1973), and S.F. 1089, 68th Minn. Legis., 1st Sess. § 1 (1973), contained the identical declaration of policy. Another Senate bill, S.F. 884, 68th Minn. Legis., 1st Sess. § 1 (1973), contained a similar declaration of policy, with the exception that it did not require the indemnified residents to be "needy," nor did it contain the proviso regarding insurance and private coverage. Although H.F. 452 was enacted it had been amended prior to passage to conform with S.F. 884 and the declaration of public policy had been deleted. See 4 MINN. S. JOUR. 5600, 5607 (1974).

84. It is a general rule that statutes which are regarded by the courts as being humanitarian in purpose or which are grounded on a humane public policy are to be accorded a liberal construction. *Johnson v. Ford Motor Co.*, 289 Minn. 388, 394, 184 N.W.2d 786, 791 (1971) (unemployment compensation); *Adelman v. Northwest Airlines, Inc.*, 267 Minn. 116, 123, 125 N.W.2d 444, 448 (1963) (same); *Nordling v. Ford Motor Co.*, 231 Minn. 68, 76-77, 42 N.W.2d 576, 581-82 (1950) (same).

85. *E.g.*, *Blankholm v. Fearing*, 222 Minn. 51, 54, 22 N.W.2d 853, 855 (1946). Thus, where ambiguity exists in the statutory language the intention of a remedial statute prevails over the literal meaning of its terms. See *State ex rel. Minneapolis v. St. Paul, M. & M. Ry.*, 98 Minn. 380, 396-98, 108 N.W. 261, 266-67 (1906), *aff'd mem.*, 214 U.S. 497 (1909).

86. See, *e.g.*, MINN. STAT. § 299B.07, subd. 3 (1974) (hearing not required unless ordered by Board member); *id.* § 299B.07, subd. 4 (awards made by single Board member); 9 MINN. REGS., REPAR. BOARD RB4-A, 6-(a), 7-(a) (1974) (simplified administrative forms).

lative intention that the Act be interpreted strictly as to each individual claim. Initial legislative miscalculation as to the potential dollar amount of claims which would be filed,<sup>88</sup> the desire to maintain low administrative overhead so that the maximum amount of the appropriation would reach the claimants,<sup>89</sup> the extension of coverage to losses not expressly included by similar acts in other states,<sup>90</sup> and the imposition of statutory duties to advertise the program's existence<sup>91</sup> indicate that the cost factor was considered by the legislature in defining the scope of coverage under the Act. The cumulative effect of these factors thus expresses a legislative intention to allow the administrative agency and the courts to avoid concerning themselves with economics when construing the Act's substantive provisions in a particular

87. In 1974 \$100,000 was appropriated from the general fund for organization, operation, administration, and staffing of the Board. Act of Apr. 11, 1974, ch. 463, § 18, [1974] Minn. Sess. Laws 1140. When the original bill came out of the Committee on Appropriations, a recommendation that \$150,000 be appropriated annually was adopted by the House of Representatives. See 4 MINN. H.R. JOUR. 6200, 6207 (1974). Six days later the Senate approved a recommendation that a mere \$25,000 be appropriated. See 4 MINN. S. JOUR. 5606-07 (1974). The House of Representatives refused to concur in this amendment, and a motion to appoint a conference committee prevailed. See 4 MINN. H.R. JOUR. 6833 (1974). The \$100,000 appropriation was a product of the conference committee. See *id.* at 7072, 7079.

88. The experience of other states indicated the initial \$100,000 appropriation would be adequate. In the first five months after enactment of Hawaii's crime reparations act, three awards were made for a total of \$1,000, and in the following 12 months 47 awards were given for a total of \$111,945.23. 1 HAWAII CRIMINAL INJURIES COMPENSATION COMM'N, ANN. REP. 3 (1968); 2 HAWAII CRIMINAL INJURIES COMPENSATION COMM'N, ANN. REP. 2-3 (1969). Similarly, Maryland's compensation board reported 42 awards totalling \$66,723 after the first year of operation. 1 MARYLAND CRIMINAL INJURIES COMPENSATION BOARD, ANN. REP. 5, 8 (1969). New Jersey's first compensation board report covered 20 months from November 1, 1971, to June 30, 1973. In that time period, 107 claimants received a total of \$219,748.07, or approximately \$110,000 for 12 months. 1 NEW JERSEY VIOLENT CRIMES COMPENSATION BOARD, ANN. REP. 1.3 (1973). However, by January of 1976 the Board had exhausted the appropriations for the fiscal year ending June 30, 1976, and put a moratorium on further awards until additional funds were obtained. Minutes of Minnesota Crime Victims Reparations Board, Jan. 23, 1976.

89. See text accompanying notes 67-77 *supra*.

90. Compare MINN. STAT. §§ 299B.02(7) (a) (i)-(ii), .02(8) (1974) with, e.g., ALASKA STAT. § 18.67.110 (1974), *as amended*, (Supp. 1975) and GA. CODE § 47-523 (1974) and MASS. GEN. LAWS ANN. ch. 258A, § 5 (Supp. 1976). A few states do not clearly delineate the scope of reparation awards, using such language as "expenses actually and reasonably incurred," "pecuniary loss," and "out-of-pocket loss." See ALASKA STAT. § 18.67.110 (1974), *as amended*, (Supp. 1975); HAWAII REV. STAT. § 351-33 (1968); MASS. GEN. LAWS ANN. ch. 258A, § 5 (Supp. 1976); N.J. STAT. ANN. § 52:4B-12 (Supp. 1976); N.Y. EXEC. LAW § 631(2) (McKinney 1972).

Extension of coverage is promoted by the absence of any residency or need requirements for claimants. See MINN. STAT. § 299B.02(9) (1974); note 83 *supra*. In contrast, several states deny an award if the claimant will not suffer undue financial hardship. See ALASKA STAT. § 18.67.080 (c) (1974) (reparations board may consider victim's need for financial aid); LA. REV. STAT. ANN. § 46:1813(A) (Supp. 1976) (no award shall be made unless applicant will suffer undue hardship); MD. ANN. CODE art. 26A, § 12(f) (Supp. 1975) (same for specified claimants).

91. MINN. STAT. §§ 299B.06 subd. 1(d), .15 (1974).

case. Instead, each case should be treated on its own merits without concern for the size of the claim other than the statutory limits.<sup>92</sup> In short, a concern for the cost of an individual's claim should not compromise the Act's primary purpose of alleviating a claimant's financial burden arising as a direct result of the crime. The acts of other states which were considered by the legislature in drafting the Minnesota Act,<sup>93</sup> the general rules of statutory construction,<sup>94</sup> and judicial interpretations of general principles of indemnity under insurance law<sup>95</sup> are also helpful tools of construction.

### B. Eligibility for Reparations

Before an award will be made, certain requirements must be met. The claimant must not be a member of a class of excluded claimants;<sup>96</sup> the crime must be reported to the police within five days of its occurrence or of the time when the report could reasonably have been made;<sup>97</sup> the victim or claimant must cooperate fully with the police;<sup>98</sup> the claim must be filed within a year of the victim's injury or death or within a year of the time when it could have been made;<sup>99</sup> and the amount claimed must be at least \$100.<sup>100</sup>

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92. The statutory limitation is \$10,000. *Id.* § 299B.04(3) (1974). Thus, it was possible that only 10 claimants could have recovered the first year the Act was in effect. *See* Act of Apr. 11, 1974, ch. 463, § 18, [1974] Minn. Sess. Laws 1140 (\$100,000 appropriation). The annual appropriation for subsequent years have been tripled, thereby relieving the financial pinch initially felt by the Board. *See* Act of Apr. 20, 1976, ch. 331, § 13, [1976] Minn. Sess. Laws 1286 (\$100,000 appropriation for the year ending June 30, 1976; \$100,000 appropriation for the year ending June 30, 1977); Act of May 30, 1975, ch. 204, § 31, subd. 8, [1975] Minn. Sess. Laws 571 (\$200,000 appropriation for the year ending June 30, 1976; \$200,000 appropriation for the year ending June 30, 1977).

93. *See* note 36 *supra*. Since these acts are relatively new, only a small number of cases have dealt with crime victims acts. *See, e.g.,* *Criminal Injuries Comp. Bd. v. Gould*, 273 Md. 486, 331 A.2d 55 (1975); *Hicks v. Hatem*, 265 Md. 260, 264 n.1, 289 A.2d 325, 327 n.1 (1972) (dictum); *Frazier v. Unsatisfied Claim & Judgment Fund Bd.*, 262 Md. 115, 119, 277 A.2d 57, 59 (1971) (dictum); *Gurley v. Commonwealth*, 363 Mass. 595, 296 N.E.2d 477 (1973); *In re Hollywood*, 124 N.J. Super. 50, 304 A.2d 747 (App. Div. 1973); *Weisinger v. Van Rensselaer*, 79 Misc. 2d 1023, 326 N.Y.S.2d 126 (Sup. Ct. 1974); *Utica Mut. Ins. Co. v. Zamenick*, 76 Misc. 2d 1, 350 N.Y.S.2d 329 (Sup. Ct. 1973); *Johnson v. Nissman*, 39 App. Div. 578, 331 N.Y.S.2d 796 (1972); *Hayes v. Van Rensselaer*, 69 Misc. 2d 315, 329 N.Y.S.2d 900 (Sup. Ct. 1972). Significance can be attached to the incorporation or rejection of provisions of acts before the legislature.

94. MINN. STAT. §§ 645.08-.43 (1974).

95. *See, e.g.,* *Sorenson v. Safety Flate, Inc.*, 298 Minn. 353, 216 N.W.2d 859 (1974); *Olson v. Village of Babbitt*, 291 Minn. 105, 189 N.W.2d 701 (1971); *Farr v. Armstrong Rubber Co.*, 288 Minn. 83, 179 N.W.2d 64 (1970); *American Mut. Liab. Ins. Co. v. Reed Cleaners*, 265 Minn. 503, 122 N.W.2d 178 (1963).

96. MINN. STAT. § 299B.03, subds. 2(c)-(d) (1974). *See* notes 101-28 *infra* and accompanying text.

97. MINN. STAT. § 299B.03, subd. 2(a) (1974). *See* notes 129-33 *infra* and accompanying text.

98. MINN. STAT. § 299B.03, subd. 2(b) (1974). *See* notes 129-33 *infra* and accompanying text.

99. MINN. STAT. § 299B.03, subd. 2(e) (1974), *as amended*, Act of Apr. 8, 1976, ch. 193, § 1, [1976] Minn. Sess. Laws 657. *See* notes 134-36 *infra* and accompanying text.

100. MINN. STAT. §§ 299B.03 subd. 2(f), .04(2) (1974). *See* notes 137-46 *infra* and accompanying text.



### 1. Eligible Claimants

The Act provides for recovery by four classes of persons: the victim, his dependents, his estate, and those who have furnished him with certain defined medical products, services, or accommodations.<sup>101</sup> In addition, the Act automatically excludes a class of otherwise eligible claimants from receiving compensation. This class consists of the offender, the offender's spouse, children, parents, brother and sister, members of his household, and any person whose receipt of an award would unjustly benefit the offender.<sup>102</sup> Perhaps the greatest difficulties with these eligibility requirements will be encountered in defining those who qualify as dependents of the victim and in dealing with claims of those who are excluded from recovery.

#### a. Dependents

A "dependent" is defined by the Act as "any person who was dependent upon a deceased victim for support at the time of the crime."<sup>103</sup> Unlike the Uniform Act and acts of other states which define dependent as one wholly or partially dependent on the deceased for support or care,<sup>104</sup> the Act is silent as to the degree of dependency required for eligibility. The absence of similar language in the Minnesota Act, especially in light of the consideration given the other acts during the drafting stages,<sup>105</sup> could lead to a construction which would allow only persons wholly dependent on the victim to recover. This interpretation, however, is inconsistent with the broad remedial purposes of the Act.<sup>106</sup> Moreover, interpretation of "dependent" by the Minnesota Supreme Court in the analogous contexts of insurance and workers' com-

101. MINN. STAT. § 299B.03, subds. 1(a)-(d) (Supp. 1975). In addition, the Act also provides a derivative method of recovery for guardians, conservators, and agents of any of those persons comprising the four main classes. *Id.* § 299B.03, subd. 1(e).

102. *Id.* § 299B.03, subds. 2(c)-(d) (1974). The Act provides, however, that the offender's spouse, children, parents, brother and sister, and members of his household may recover where the "interests of justice otherwise require." *Id.* § 299B.03, subd. 2(c).

103. *Id.* § 299B.02(6).

104. The Uniform Act defines "dependent" to mean "a natural person wholly or partially dependent upon the victim for care or support . . ." UNIFORM CRIME VICTIMS REPARATIONS ACT § 1(f). Both New Jersey and Hawaii, while permitting a dependent who is either wholly or partially dependent on the victim at the time of his death to recover, limit application of this provision to relatives. *See* N.J. STAT. ANN. § 52:4B-2 (Supp. 1976); HAWAII REV. STAT. § 351-2 (1968). Massachusetts restricts classification as a dependent to an enumerated list of relatives, and imposes a further requirement that the relative be living with the victim at the time of his injury or death. MASS. GEN. LAWS ANN. ch. 258A, § 1 (Supp. 1976).

105. *See, e.g., Tape of Meeting on S.F. 884 Before the Subcomm. on Criminal Law & Corrections of the Minnesota Senate Comm. on the Judiciary* (Oct. 9, 1973); *Tape of Joint Meeting on S.F. 884 Before the Minnesota Senate Comm. on the Judiciary and the Minnesota House Comm. on Crime Prevention & Corrections* (Nov. 13, 1973).

106. The legislature intended to compensate victims of crimes and to relieve hardships that result from such crimes, a purpose which the Minnesota court has recognized as remedial. *Cf., e.g., State ex rel. Duluth Brewing & Malting Co. v. District Court*, 129 Minn. 176, 178, 151 N.W. 912, 913 (1915) (workers' compensation).

pensation has merely required regular and expected reliance of some degree on the capacities of the injured party.<sup>107</sup> Drawing from these definitions of dependency, a reasonable test to apply under the Act seems to be whether the claimant regularly<sup>108</sup> relied on contributions from the deceased for some form of support in the past.<sup>109</sup> Actual dependency is controlling rather than the degree of the dependency.

Specification of the date of the crime, rather than the date of death, for purposes of determining dependency has the advantage of not overburdening the Board by requiring time-consuming and expensive investigations into the genuineness of the dependency, because parties would have no opportunity to "arrange" their relationship in order to qualify for reparations. Use of the date of the crime in determining dependency has the further effect of excluding from recovery children of the victim conceived after the date of the crime, because in no sense can a child not yet conceived rely on the capacities of the victim. The question, however, whether a child conceived before the date of the crime and born after that date is also excluded remains.

### (1) "Post-crime" Children

The Act properly does not deal with the issue of whether a posthumous child can recover, because those acts which do make specific provision for

107. The support need not be total. *Meyers v. Pacific Greyhound Lines*, 134 F.2d 457, 458-59 (10th Cir. 1943); *Wells-Dickey Trust Co. v. Chicago B. & Q.R.R.*, 166 Minn. 79, 82-83, 207 N.W. 186, 187 (1926), *rev'd on other grounds*, 275 U.S. 161 (1927). Nor must the person be unable to support himself, provided the support received is actual. *Ketchikan Lumber & Shingle Co. v. Bishop*, 24 F.2d 63, 63 (9th Cir. 1928); *Wells-Dickey Trust Co. v. Chicago B. & Q.R.R.*, *supra* at 82-83, 207 N.W. at 187. Moreover, no legal obligation to support the claimant need be established. *See Langland v. State Dep't of Highways*, 250 Minn. 544, 85 N.W.2d 736 (1957) (by implication). However the degree to which the claimant relied on the regular contributions of the deceased is a factor. *See Bartkey v. Sanitary Farm Dairies*, 170 Minn. 159, 212 N.W. 175 (1927).

108. Assistance which is prompted by nothing more than impulse or generosity of the victim lacks the necessary element of regularity. *See Blocker v. Most Worshipful Grand Lodge*, 132 S.W.2d 1088, 1090 (Mo. Ct. App. 1939). Furthermore, a requirement of regularity eliminates the possibility of recovery by a person who temporarily happened to be receiving support from the deceased on the date of the crime.

109. Once dependency is established one of the factors the Board will have to consider in each case to determine the amount of recovery to be awarded for loss of support is whether, on the date of the crime, the claimant had a reasonable basis for expecting continued contributions from the victim had he lived. For example, the fact that the deceased's spouse filed for dissolution prior to the date of the crime would act to reduce the spouse's recovery for loss of support. Recovery should be allowed only for the provable loss up to the time dependency would have terminated naturally. Similar results would be obtained where claims are made by a dependent who will soon be married, emancipated, or otherwise financially self-supporting. If consideration were not given to an anticipated change in the status of a claimant, the only means of assuring that a claimant will not benefit by the victim's death would be to make frequent and costly re-evaluations of the claimant's status. Should the foreseeable change in the claimant's status not occur, he has the right to reopen the proceedings to consider the amount of the award. MINN. STAT. § 299B.06, subd. 2(h) (1974).

posthumous children require dependency on the date of the victim's death.<sup>110</sup> Where the date of the crime is the determinative date, the proper inquiry is whether a child conceived before the date of the crime and born after—the “post-crime” child—can recover. It is assumed that from the date of conception a fetus is “dependent” on the deceased in that it receives and relies on regular support contributions from him in the form of prenatal care. The only issue that needs to be resolved, therefore, in determining the eligibility of a “post-crime” child is whether the child is a “person” on the date of the crime. The term “person” is not defined in the Act and thus gives rise to questions regarding the viability of the fetus<sup>111</sup> and whether the “dependent” need have a separate and independent existence from the mother on the date of the crime.<sup>112</sup> It is unlikely, however, that the authors intended the Board to become involved in the resolution of these time-consuming questions, because that would greatly increase the administrative costs the legislature was so concerned about keeping at a minimum. The only reasonable conclusion that can be made is that the legislature intended that those not yet born on the date of the crime not be eligible to recover under the Act.

## (2) *Illegitimate Children*

The Minnesota statute makes no specific reference to the ability of an illegitimate child to recover. The language of the statute, however, seems to indicate that the legal status of the child would be irrelevant as long as the child can show it meets the requirements of the dependency test.<sup>113</sup> This view might be mandated in light of a recent decision of the United States Supreme Court that for the purposes of recovery under workers' compensation laws an illegitimate child cannot be denied recovery which it could otherwise obtain as a legitimate child without violating the equal protection clause of the fourteenth amendment.<sup>114</sup> Thus, whatever the legal status of the child, it can nevertheless be a dependent, and would therefore be covered by the provisions of the Act.

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110. The UNIFORM CRIME VICTIMS REPARATIONS ACT § 1(f), as well as several state statutes, see ALASKA STAT. § 18.67.180(2) (1974); HAWAII REV. STAT. § 351-2 (1968); N.J. STAT. ANN. § 52:4B-2 (Supp. 1975), specifically allow a child born after the death of the victim to recover.

111. The Minnesota Supreme Court has held that a cause of action will lie for the wrongful death of an unborn viable child. See *Pehrson v. Kistner*, \_\_\_\_ Minn. \_\_\_\_, 222 N.W.2d 334 (1974).

112. Other jurisdictions have held that a fetus which has reached a period of prenatal maturity where it is capable of independent life apart from the mother is a “person” for the purposes of bringing an action for injuries suffered during its viability, W. PROSSER, *HANDBOOK OF THE LAW OF TORTS* § 55, at 336-37 (4th ed. 1971), and that the parents of a child injured while viable who dies after birth from those injuries may bring an action for wrongful death. See, e.g., *Peterson v. Nationwide Mut. Ins. Co.*, 175 Ohio St. 551, 197 N.E.2d 194 (1964).

113. See MINN. STAT. § 299B.02(6) (1974).

114. *Weber v. Aetna Cas. & Sur. Co.*, 406 U.S. 164 (1972). The Court said that an illegitimate unacknowledged child could suffer as much as an acknowledged child or one born in wedlock, citing *Levy v. Louisiana*, 391 U.S. 68 (1968) (statute barring an illegitimate unacknowledged child from recovering for mother's wrongful death is a denial of equal protection).

### *b. Estate of Deceased*

The estate of the deceased is also eligible to file a claim for reparations.<sup>115</sup> The losses which the estate normally would incur are for services rendered to the victim for which it is liable after his death, as well as for funeral expenses.

### *c. Other Persons*

"Any other person" who has incurred economic loss by purchasing products, services, or accommodations for a victim is also eligible for compensation.<sup>116</sup> The statutory term "any other person" would appear to refer to friends or non-dependent parents or children who paid for services or products necessary for the treatment of the victim.<sup>117</sup> While a creditor, such as a hospital or druggist, clearly will have incurred a loss for goods and services provided, the creditor has not "purchased" anything in the normal sense of the word. Therefore, creditors cannot apply directly for program benefits, although they can receive compensation directly from the Board after a victim, dependent, the estate of the deceased, or any other qualified person has been granted an award.<sup>118</sup>

115. MINN. STAT. § 299B.03, subd. 1(c) (Supp. 1975).

116. *Id.* § 299B.03, subd. 1(d).

117. The original wording of the statute was "any other person who has incurred economic loss by purchasing any of the products, services, and accommodations described in section [299B.02], clauses (a)(i) and (a)(ii) for a victim." Act of Apr. 11, 1974, ch. 463, § 3, [1974] Minn. Sess. Laws 1135. The quoted clause "(a)" refers to loss in the case of an injury as distinguished from loss in the case of death. Compensation for the latter loss is dealt with in clause "(b)" of MINN. STAT. § 299B.02(7) (1974). Thus, it was arguable that the original Act provided compensation to "others" only in the event the victim did not ultimately die from his injuries. This result is discriminatory and illogical. While it was possible to construe the limitations of the original Act as allowing reimbursement of "other persons" only for expenses resulting from injury before death and not those expenses resulting from death, this intent was by no means clear. In 1975 this doubt was removed when the provision was amended to include losses incurred by others whether or not the victim subsequently died from his injury. Act of June 2, 1975, ch. 246, § 1, [1975] Minn. Sess. Laws 698. In 1976, however, a revisor's bill changed the limitation back to its original form. Act of Feb. 2, 1976, ch. 2, § 119, [1976] Minn. Sess. Laws 13. The change was made without the knowledge of any members of the Board or of the Executive Director. Letter from Samuel L. Scheiner, Executive Director of the Minnesota Crime Victims Reparations Board to William Mitchell Law Review, Sept. 1, 1976. Nevertheless, the Board intends to read § 299B.03, subd. 1(d) as it did after the 1975 amendment. Letter from Samuel L. Scheiner, Executive Director of the Minnesota Crime Victims Reparations Board to William Mitchell Law Review, Aug. 24, 1976. Undoubtedly, the 1976 change was the result of a technical mistake and should be removed at the earliest possible opportunity. Should this not be the case, however, the compensability of losses incurred by an "other person" in the event of the victim's death is again placed in doubt. To avoid an absurd or unreasonable construction, this doubt should be resolved by allowing in all instances reimbursement of "other persons" for "economic loss" incurred as a result of the victim's injury but precluding in all instances any recovery for losses incurred as a result of death, *i.e.*, without consideration of whether the victim ultimately dies from the injury. See MINN. STAT. § 645.17(1) (1974).

118. Since economic loss, by definition, is not limited to out-of-pocket loss, see MINN. STAT. § 299B.02(7) (1974), a debt due and owing to a creditor for services rendered is within the range of losses for which eligible claimants could apply for recovery.

#### d. *Persons Excluded from Recovery*

The offender's spouse, children, parents and siblings, and members of his household are automatically excluded from compensation under the Act, unless the "interests of justice" require otherwise.<sup>119</sup> This class exclusion attempts to avert collusion between the offender and the claimant and to prevent any benefit or advantage from flowing to the offender as a result of his criminal conduct.<sup>120</sup> Yet strict enforcement of the other provisions of the Act seems to be more than adequate in accomplishing these purposes.<sup>121</sup> While it certainly cannot be argued that the exclusionary provisions are intrinsically unreasonable, an automatic or strict application of them would result in inequities.

The exclusion of the offender's family operates from the presumption that victims who are members of the offender's family, merely by virtue of that relationship, are either partially responsible for the crime, or likely to conspire to fabricate a claim.<sup>122</sup> Furthermore, it has been suggested that the prospect of compensation might induce family members to injure one another.<sup>123</sup>

Use of the statutory "presumption," however, would exclude in many instances a large percentage<sup>124</sup> of those persons whom the program allegedly

119. *Id.* § 299B.03, subd. 2(c). In addition, the offender and any persons whose receipt of an award would unjustly benefit the offender are completely excluded from recovery. *Id.* § 299B.03, subd. 2(d).

120. Yarborough, *The Battle for a Federal Violent Crimes Compensation Act: The Genesis of S. 9, 43 S. CAL. L. REV.* 93, 104 (1970). One situation where the offender might "benefit from" his crime is when the offender simply appropriates to his own purposes the award made to a family member. Since the stronger family member often attacks the weaker member, the victim member, the victim may be unable or unwilling to prevent usurpation by the offender. However, where in the Board's estimation this appears to be a strong possibility, it could exercise its discretionary power to pay the reparations directly to the suppliers. MINN. STAT. § 299B.09 (1974).

121. For instance, one deterrent to fraud is the criminal sanction under the Act for filing a false claim. *See* MINN. STAT. § 299B.16 (1974). The Act also provides that an award may be reduced to the extent deemed reasonable in light of a claimant's contributory misconduct. *See id.* §§ 299B.03 subd. 2(d), .04(2) (1974). Furthermore, it is unlikely that many claimants will attempt to defraud the Board, since they cannot recover an amount greater than their actual provable expenses. *See id.* § 299B.07, subd. 3 (1974). When coupled with the Board's discretionary power to pay benefits directly to suppliers of medical products, services, or accommodations, *id.* § 299B.09 (1974), strict enforcement of these other provisions obviates the need for a class exclusion.

122. *See* Yarborough, *supra* note 120, at 104. *But see* Lamborn, *The Scope of Programs for Governmental Compensation of Victims of Crime*, 1973 U. ILL. L.F. 21, 85.

123. The deterrent effect of denying recovery is questionable. If a potential criminal is not deterred by affection or fear of prosecution, it is unlikely that denial of recovery to the family member will diminish the criminal propensity. Lamborn, *supra* note 122, at 85.

124. Percentage of victims who are members of the criminal's family:

criminal homicide:	25%
aggravated assault:	14%
forcible rape:	7%

was intended to cover, and the Board's power to act in the "interests of justice" should therefore be invoked liberally. Actual and, in many cases, severe injuries can be proved which would negate any suggestion that the claim was collusive.<sup>125</sup> Furthermore, temptation of collusion between family members is no lesser or greater than that which exists between friends.<sup>126</sup> One can turn what in actuality is an accident into a crime of assault by a stranger just as easily as one can turn it into a crime by a spouse.<sup>127</sup> Also, this provision has no deterrent effect in cases where a claimant states that he is unaware of the identity of the offender, while having actual knowledge that the offender was a member of the family. Finally, family members are not, in some instances, in sufficiently close geographical or social proximity with one another for the opportunity for collusion to exist. Automatic application of the exclusion of an offender's estranged spouse, his adult children living outside the household, or distant members of the offender's family would often lead to harsh results.

Like family members, persons "living in the same household with" the offender presumably are excluded because their continuous contact with the offender is deemed to render them more susceptible to collusive overtures. According to such reasoning, transients would be able to file a claim, whereas those maintaining a residence with the offender for some substantial period of time would be excluded. The exclusion, however, of non-family members of the household of the offender may work the same hardships as does the exclusion of family members.<sup>128</sup> Therefore, the Board should not hesitate to invoke its power to serve the "interests of justice" where household members file claims.

## 2. Reporting to and Cooperating with the Police

In order to be eligible for an award, an individual must report the crime to the police within five days of its occurrence or of the time when the report could reasonably have been made.<sup>129</sup> The victim or claimant must also cooperate fully with the police in their investigation of the reported crime.<sup>130</sup> These requirements aid law enforcement agencies in combating crime. In addition, because the Board generally adopts the findings of the police as to the issues of whether a crime actually occurred and whether the victim coop-

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Lamborn, *supra* note 122, at 84-85, citing D. MULIHILL & M. TUMIN, CRIMES OF VIOLENCE 217 (1969).

125. The majority of homicides are committed by relatives and friends of the victims. U.S. FED. BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES 18, 19 (1974). For a further statistical breakdown of types of violent crimes among family members, see U.S. DEP'T OF JUSTICE, SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS 197 (1973).

126. Lamborn, *supra* note 122, at 85.

127. *Id.*

128. See Cosway, *Crime Compensation*, 49 WASH. L. REV. 551, 562 (1974).

129. MINN. STAT. § 299B.03, subd. 2(a) (1974).

130. *Id.* § 299B.03, subd. 2(b).

erated fully with the police,<sup>131</sup> these initial dealings with law enforcement officials are crucial to a victim's or other claimant's recovery.

The five-day reporting period is arbitrary, but is more generous than provisions in the majority of other states.<sup>132</sup> This period appears to be more realistic, because it takes into account the majority of cases in which the delay is justified and is a result of the crime itself, such as short periods of convalescence due to the crime-related injury and temporary incapacity due to the initial emotional trauma of the crime. The reporting period requirement is liberalized even further to allow the crime to be reported within five days of the time when a report could reasonably have been made.<sup>133</sup>

### 3. Statute of Limitations

A one-year statute of limitations is applicable to filing claims with the Board.<sup>134</sup> The period begins to run at the date of the injury or death,<sup>135</sup> rather than the date of the crime. A recent amendment<sup>136</sup> to the statute to allow a claim to be filed "within one year of the time when a claim could have been made" was prompted by a claim which arose from a kidnapping and murder in August, 1974. The victim's body was not discovered until approximately 15 months later, at which time a claim was filed. The Board sought the amendment, feeling a need for flexibility in order to avoid denying an otherwise qualifying claim for failure to comply with an arbitrary statutory requirement.

The statute of limitations thus recognizes that an injury resulting from the crime may not manifest itself for some time after the date of the crime. A generous period of time is now provided within which the claimant can determine the extent of the injury- or death-related expenses incurred.

131. Letter from Samuel L. Scheiner, Executive Director of the Minnesota Crime Victims Reparations Board to William Mitchell Law Review, Aug. 24, 1976. The Board retains discretion, of course, to adopt its own findings where there appears to be bias on the part of the police. *Id.*

132. Several states require the crime to be reported within 72 hours, with an extension for good cause. *See* LA. REV. STAT. ANN. § 46:1813E (Supp. 1976); N.D. CENT. CODE § 65-13-06.4 (Supp. 1975); WASH. REV. CODE § 7.68.060(2) (Supp. 1976). Other states are even more demanding and require the crime to be reported within 48 hours unless there is good cause. *See* MD. ANN. CODE art. 26A, § 12(a) (1973); MASS. GEN. LAWS ANN. ch. 258A, § 5 (Supp. 1976); N.Y. EXEC. LAW § 631(1) (McKinney 1972). Illinois requires the crime to be reported as soon as practicable. ILL. REV. STAT. ch. 70, § 73(c) (Supp. 1976).

133. MINN. STAT. § 299B.03, subd. 2(a) (1974). Examples of situations which fall within this exception are a more prolonged convalescence period or extended emotional trauma, a lost camper who does not emerge from the woods before five days after the crime, a victim suffering from amnesia, or the discovery of a murder weeks after its commission.

134. *See id.* § 299B.03, subd. 2(e) (1974), *as amended*, Act of Apr. 8, 1976, ch. 193, § 1, [1976] Minn. Sess. Laws 657.

135. *Id.*

136. Act of Apr. 8, 1976, ch. 193, § 1, [1976] Minn. Sess. Laws 657, *to be codified as* MINN. STAT. § 299B.03, subd. 2(e).

#### 4. The Minimum Claim Requirement

To ease the Board's administrative, investigative, and economic burdens, the Act disallows claims for less than \$100 of economic loss.<sup>137</sup> The imposition of the minimum claim requirement is intended to serve two functions. As do similar provisions in insurance policies,<sup>138</sup> it screens out a large number of small claims which would create a clog in the administrative system.<sup>139</sup> The requirement also preserves limited funds for those whose needs are greater because of their more severe economic loss.

The requirement, however, does not avoid imposing a hardship. A reasonable assumption can be made that victims from middle and upper income groups will either have collateral sources of recovery,<sup>140</sup> or be better able to absorb losses of less than \$100. Victims from lower income groups, however, will suffer the brunt of the requirement. They form a disproportionate percentage of crime victims and are peculiarly unable to bear even small losses.<sup>141</sup>

Whether the exclusionary floor accomplishes its purpose of economy can be questioned. All claims which are filed must be considered,<sup>142</sup> even if the minimum amount of loss is not claimed. If denied, the claimant must be given the reasons for denial in writing.<sup>143</sup> Thus, arguably no added administrative burden would result by allowing smaller claims.<sup>144</sup> Moreover, the \$100 mini-

137. See MINN. STAT. § 299B.04(2) (1974) (\$100 deductible). In addition to the \$100 deductible, the Act also has a separate provision requiring the claim to exceed \$100. See *id.* § 299B.03, subd. 2(f). The latter provision is redundant because the provision for deducting \$100 from the award has the same effect as requiring a compensable award to exceed \$100.

138. One purpose of the minimum claim requirement in insurance is to minimize premium rates by avoiding the costs of adjusting small claims. See A. MOWBRAY, *INSURANCE* 150 (6th ed. 1969). See also C. KULP & J. HALL, *CASUALTY INSURANCE* 45 (4th ed. 1968).

139. Lamborn, *supra* note 122, at 54.

140. See note 30 *supra*.

141. Note, *New York Crime Victims Compensation Board Act: Four Years Later*, 7 COLUM. J.L. & SOC. PROB. 25, 41 (1971).

142. MINN. STAT. § 299B.07, subds. 1-2 (1974) provide:

Subdivision 1. A claim, when accepted for filing, *shall* be assigned by the chairman to himself or to another member of the board.

Subd. 2. The board member to whom the claim is assigned *shall* examine the papers filed in support of the claim and cause an investigation to be conducted into the validity of the claim. (Emphasis added.)

Of course, many claims are never filed after a preliminary telephone inquiry to the Crime Victims Reparations Board because of obvious failure to meet a statutory requirement. Letter from Samuel L. Scheiner, Executive Director of the Minnesota Crime Victims Reparations Board to William Mitchell Law Review, Sept. 1, 1976.

143. MINN. STAT. § 299B.07, subd. 5 (1974).

144. Although the administrative burden of initial investigation is not affected by the \$100 minimum, the denial of a claim on the basis of failure to satisfy the minimum reduces the administrative task of any further investigation which would have been necessary to settle the claim. Forty-seven claims were so denied during the period from July 1, 1974, through June 30, 1976. Board Register, *supra* note 72, table IV. A possible alternative to the \$100 minimum would be a filing fee which would help to defray costs and eliminate the de minimis claims. Massachusetts, which administers the program through the courts, imposes such a fee by statute.



mum ultimately may encourage inflated claims in order to recoup losses actually suffered.<sup>145</sup> It may also promote collusion between claimants and creditors seeking to guarantee payment for services, products, and accommodations rendered, which would actually increase the burdens on the program.<sup>146</sup>

### C. *Compensable Crime*

To be compensable, injury or death must be the direct result of either a crime or an attempt to prevent a crime, or an attempt to apprehend a person suspected of engaging in a crime.<sup>147</sup> "Crime" is defined by the Act as conduct which (1) may subject one to a sentence of imprisonment, regardless of the offender's capacity to commit the crime, (2) poses a substantial threat of personal injury or death, and (3) occurs or is attempted within the state.<sup>148</sup> Crimes involving motor vehicles, aircraft, and watercraft are specifically excluded from this definition, except where the criminal conduct is intended to cause injury or death, or the vehicle is used in the commission of a felony.<sup>149</sup>

While other provisions relating to contributory misconduct,<sup>150</sup> good faith,<sup>151</sup> and collateral source,<sup>152</sup> have been enacted to safeguard against unjustifiable disbursement of the Board's limited funds, the limitations imposed here, along with the direct result requirement<sup>153</sup> set the outside boundaries within which an action must fall before a claim will be considered and before the other provisions will be applied.

Two of the three parts of the Act's definition of "crime" are significant.

MASS. GEN. LAWS ANN. ch. 258A, § 4 (Supp. 1976). It still retains, however, both the \$100 minimum and the \$100 deductible. *Id.* ch. 258A, § 5.

145. The effect of the minimum requirement when combined with the \$100 compulsory deduction from the total award may in fact provide an inducement to fraud. *See Note, supra* note 141, at 37-38; Floyd, *Compensation to Victims of Violent Crime*, 6 TULSA L. REV. 100, 126 (1970). If the actual loss suffered is \$105, the claimant may try to inflate his claim to \$205 in order to recoup his actual losses. Predictably, few people will take the time to file a legitimate claim of \$105 or \$115 when they will be able to recover only \$5 or \$15. Thus the provision may be a deterrent, but nonetheless it evidences a belief that minor losses are not as deserving of compensation as larger ones.

146. This result may not occur, however, in light of the Board's discretion to make awards directly to the suppliers of services. *See* MINN. STAT. § 299B.09 (1974).

147. *Id.* § 299B.02(9).

148. *Id.* § 299B.02(5)(a).

149. *Id.* § 299B.02(5)(c). This is a practical limitation on the scope of the program for several reasons. First, a right to recover for wrongful death is permitted under Minnesota law. *Id.* § 573.02. Secondly, there is a substantial likelihood of insurance coverage where motor, water, or air vehicles are involved. *See id.* § 65B.48 (1974), *as amended*, (Supp. 1975) (insurance requirements under the no-fault act). Third, because more negligent acts are committed than intentional acts, cost economy requires negligence actions to be excluded.

150. MINN. STAT. § 299B.04(2) (1974).

151. *Id.* § 299B.02(9).

152. *Id.* § 299B.02(4).

153. *See* notes 156-66 *infra* and accompanying text.

The first condition, in effect, requires the conduct to constitute at least a misdemeanor. However, a misdemeanor, or even a felony, is not a "crime" within the meaning of the Act, unless it also satisfies the second requirement of posing a substantial threat of injury or death. This latter requirement does not specify whether the crime must intrinsically pose a "substantial threat" of personal injury or death, or whether a "substantial threat" should be determined in light of the circumstances surrounding the commission of the crime; that is, whether the crime must be dangerous by definition or dangerous as carried out. For example, burglary consists of entering or remaining within a building without the consent of the person in lawful possession or authority, and with the intent to commit a crime therein.<sup>154</sup> By definition, burglary is non-violent with respect to persons and is seemingly unattended by a substantial threat of personal injury or death. But it can be contended that where the occupant of a building is surprised by a burglar the burglary poses a "substantial threat" of personal injury. In this example, if the "substantial threat" must be intrinsic to the statutory offense, burglary is not a compensable crime, thus precluding the victim who suffers nervous shock from reparation benefits. For several reasons, a view which considers the particular circumstances of each crime is preferable.

First, "substantial threat" in the statutory definition modifies "conduct." Thus, "crime" is conduct which under the Act, *inter alia*, poses a substantial threat of personal injury or death. Second, if compensable "crime" were limited only to conduct which intrinsically poses a threat of injury or death, the "good Samaritan" provision of the Act would be emasculated. For example, one who attempted to prevent a burglary of another's home could not recover because a burglary is not, by definition, dangerous. But one who attempted to prevent an assault could recover. If "substantial threat" were differentiated on the basis of the intrinsic nature of the particular "crime" involved, it would exclude a well-intentioned good Samaritan without serving any important public purpose. Finally, whichever view of the "substantial threat" requirement is adopted, the Board still must determine whether the threat of injury or death was "substantial" or not. If the inherent nature of the crime viewpoint were adopted, then the Board would have to categorize each crime according to whether its inherent nature posed a "substantial threat" or not. If, however, the "circumstantial threat" theory were adopted, then all the circumstances of the conduct would be considered. Had the legislature intended the former view, it could have incorporated a list of crimes which pose a "substantial threat" into the Act. Because it did not include such a list, the negative implication is that the creation of a rigid enumeration of crimes which pose a "substantial threat" was not intended. In balance, the most equitable and logical approach appears to be the "circumstantial threat" theory.<sup>155</sup>

154. MINN. STAT. § 609.58, subd. 2 (1974).

155. This is, in fact, the view that has been adopted by the Board. Letter from Samuel L. Scheiner, Executive Director of the Minnesota Crime Victims Reparations Board to William Mitchell Law Review, Aug. 24, 1976.

### D. "Direct Result"

The Act specifies that an injury or death must be the "direct result" of a crime, an effort to prevent a crime, or an effort to apprehend a person suspected of engaging in a crime in order to be compensable.<sup>156</sup> Unfortunately, the Act does not define "direct result." Thus, the Board's task in establishing the exact perimeters of the term is not an easy one. Whatever standard the Board uses, it must deal with two problems. The first is causation in fact. The second is "the ultimate limits" under the Act.

Causation in fact is the easier of the two issues to resolve. It would be logically improvident to find an individual a "victim" unless a crime was at least a *sine qua non* of his injury. The critical problem, however, is concurrent causes. For example, if two causes (one criminal and one non-criminal) concur to bring about an injury, and if either is sufficient to bring about the injury, then, strictly speaking, neither act is the "but for" of the injury. Thus, it might be argued the crime was not a cause in fact of the injury.<sup>157</sup>

If the traditional tort law approach in Minnesota is used in determining "direct result," the criminal act need be only a "material and substantial factor" in bringing about the result.<sup>158</sup> In the vast majority of instances, this "material and substantial factor" test would, in effect, only reapply the "but for" test. In the special instance of concurrent causes, however, it offers a workable, common sense rule. In the absence of a compelling reason to believe that the legislature intended a different rule of intended causation, this test should apply to the Act.

After causation in fact, the second problem which must be confronted in determining the meaning of "direct result" is whether the results are too remote in time or place to justify recovery, even though they were caused in fact by the crime. In other words, when do injuries caused "in fact" by a crime cease to be the "direct result" of a crime? At such a point the person receiving the injuries ceases to be classified as a "victim" under the Act. Otherwise the ills of society would be covered. The all-important question is where the line is drawn.

Because the Act provides no definition of "direct result," the approach the Board should take may be determined by the theoretical perspective from which the Act is to be viewed. If the Act is seen as a program for indemnify-

156. See MINN. STAT. § 299B.02(9) (1974).

157. Cf. W. PROSSER, HANDBOOK OF THE LAW OF TORTS § 41, at 239-41 (4th ed. 1971).

158. This test was first adopted by the Minnesota Supreme Court in the landmark decision of *Anderson v. Minneapolis, St. P. & S. Ste. M. Ry.*, 146 Minn. 430, 179 N.W. 45 (1920), *aff'd on other grounds*, 150 Minn. 530, 185 N.W. 299 (1921). Although the Minnesota court attempted to adopt the "substantial factor" test as a test not only of causation, but also of the "proximate" cause, see *Peterson v. Fulton*, 192 Minn. 360, 363-65, 256 N.W. 901, 903-04 (1934), it later rejected such an approach, see *Seward v. Minneapolis St. Ry.*, 222 Minn. 454, 457-59, 25 N.W.2d 221, 223-24 (1946).

The test has been consistently followed in other jurisdictions as well. W. PROSSER, *supra* note 157, § 41, at 240 & n.27.

ing citizens for the negligence or quasi-negligence of the state, then to think in terms of "negligence" may be appropriate.

If the "negligence" approach is adopted, "direct result" is likely to be interpreted in terms of "proximate cause." This interpretation would provide a familiar standard and a well-settled body of rules. Although appealing, equating "direct result" with "proximate cause" creates problems, because the term "proximate cause" is used in a preceding part of the Act.<sup>159</sup> This suggests that "direct result" is not meant to be equated with "proximate cause." If the legislature had so intended, it would have used that term. In rebuttal, it might be argued that the choice of the term "direct result" by the legislature does not preclude the use of a proximate cause test because the word "direct" only modifies "result" and strictly speaking does not refer to a "cause." In other words, the term "direct result" appears to center on the injury while "proximate cause" seems to center on the wrongful act, and thus it might be argued that the tests are not necessarily inconsistent but only point to different ends of the same chain of causation. Nonetheless, the nonuse of "proximate cause" appears significant.

A second, more restrictive interpretation of "direct result" is also possible under the "negligence" approach. When the legislature uses a term which carries a special meaning, it is presumed to have intended to use it in the sense in which it has been approved and recognized by court decisions.<sup>160</sup> While some early Minnesota negligence decisions use the term "direct" in a general sense as equivalent to "proximate,"<sup>161</sup> the term "direct" is not without a special meaning in tort law. In an early and exhaustive study of the meaning of causation as it had been interpreted by the Minnesota Supreme Court, Professor Prosser indicated that the term "direct" in tort law is used to describe a causal connection without the intervention of external forces between conduct and injury.<sup>162</sup> Intervening cause<sup>163</sup> is eliminated.<sup>164</sup>

159. See MINN. STAT. § 299B.02(5)(c)(ii) (1974).

160. *State v. Bolsinger*, 221 Minn. 154, 160-61, 21 N.W.2d 480, 486 (1946), *construing* MINN. STAT. § 645.08(1) (1974).

161. See *Hamilton v. Vare*, 184 Minn. 580, 583, 239 N.W. 659, 660 (1931); *McLean v. Burbank*, 11 Minn. 277, 290 (Gil. 189, 199) (1865), *aff'd on other grounds*, 12 Minn. 530 (Gil. 438) (1867). See generally *Bauer, Confusion of the Terms "Proximate" and "Direct"*, 11 NOTRE DAME LAW. 395 (1936).

162. Prosser, *The Minnesota Court on Proximate Cause*, 21 MINN. L. REV. 19, 27 n.37 (1936) states:

[I]t is used to indicate a causal connection in which no active forces of external origin intervene between the defendant's conduct and the result. An analogy might be suggested to knocking over the first row of blocks, after which all the rest fall down without the assistance of any other force . . . Nothing intervened.

*Accord*, W. PROSSER, *supra* note 157, § 43, at 264. See generally *id.* at 263-67. See also *Bauer, supra* note 161.

163. Intervening forces are those which come into operation after the initial act. They come into active operation to change an already existing condition.

164. The operation of these two possible viewpoints can be illustrated as follows. Assume an elderly person is attacked, stabbed, and remains in a weakened condition. Later, pneumonia germs enter the victim's body and he dies. Was the victim's death a "direct result" of the crime?

While the distinctions between the "proximate" and "direct" cause approaches may be criticized as unduly technical, they do indicate the scope of the problem. Until the Act is clarified, it is doubtful what tests apply. The final solution may be that the Act, like workers' compensation, is *sui generis* and thus deserving of special treatment. The legislature knew in drafting the Act that the "direct result" requirement would be generally applied by laymen.<sup>165</sup> The most realistic and workable approach, therefore, may simply be to allow the Board to develop its own general standards on a case-by-case basis. In the area of negligence, the Minnesota Supreme Court has observed that "proximate cause is ordinarily a question of fact for the jury, to be solved by the exercise of good common sense in the consideration of the evidence of each particular cause."<sup>166</sup> Perhaps the same should be said here of the task of the Board.

### *E. Injury*

To come within the definition of "victim," a person must suffer an "injury," which is defined as "actual bodily harm." The definition, however, includes "pregnancy and mental or nervous shock."<sup>167</sup>

#### *1. Pregnancy*

The inclusion of pregnancy within the definition of "injury" apparently was intended to provide coverage to the rape<sup>168</sup> victim. A woman who becomes pregnant as the result of a rape will need to be treated for the resulting physical and psychological problems of pregnancy. She can be reimbursed under the Act for all "actual economic detriment incurred as a direct result of injury or death." Thus, an individual whose injury is pregnancy can recover the "reasonable expenses incurred for necessary medical [or] hospital . . . products, services, or accommodations,"<sup>169</sup> as well as for necessary psychological and psychiatric services,<sup>170</sup> and for loss of income the victim would

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If "direct result" is equal to "proximate cause," the victim is covered by the Act. *Cf.* *Anderson v. Anderson*, 188 Minn. 602, 248 N.W. 35 (1933) (auto accident weakened woman; death 52 days later from pneumonia). On the other hand, if "direct result" means "direct" he could not recover since the subsequent contraction of the pneumonia germs is an intervening force. They were not present at the time of the attack. *Cf.* *State v. James*, 123 Minn. 487, 144 N.W. 216 (1913) (by implication) (murder; pneumonia germs entered victim's lungs on blade of knife used in attack; no intervening force).

165. Only one of the three Board members must be an attorney. *See* MINN. STAT. § 299B.05, subd. 1 (1974).

166. *Healy v. Hoy*, 115 Minn. 321, 323, 132 N.W. 208, 209 (1911).

167. MINN. STAT. § 299B.02(8) (1974).

168. Rape, as such, no longer exists as a separate offense under Minnesota law. In 1975, the Minnesota legislature replaced the existing rape, sodomy, and indecent liberties statutes with a single statute specifying degrees of criminal sexual conduct. *Compare* Act of May 17, 1967, ch. 507, §§ 2-3, [1967] Minn. Sess. Laws 1047-48 (repealed 1975) with MINN. STAT. §§ 609.342-.345 (Supp. 1975), as amended, Act of Apr. 2, 1976, ch. 124, § 9, [1976] Minn. Sess. Laws 284-85.

169. MINN. STAT. § 299B.02(7)(a)(i) (1974).

170. *Id.* § 299B.02(7)(a)(ii).

have earned had she not been injured.<sup>171</sup>

The major problem created by the coverage of pregnancy under the Act is in defining what are the "necessary" expenses arising therefrom. Construing the term in light of its subject, context, and intended purpose,<sup>172</sup> "necessary" expenses are those which would restore the rape victim to her former physical and psychological status. Thus, a reasonable conclusion is that if a rape victim chooses to carry the pregnancy to term, the medical and related expenses and losses incurred during the prenatal, delivery, and post-partum periods of pregnancy are necessary in the achievement of this physical and mental restoration. The same analysis is applicable to expenses incurred as the result of a victim's exercise of her fundamental right to terminate the pregnancy by having an abortion.<sup>173</sup> Again, these expenses are necessary for the victim's mental and physical rehabilitation. Furthermore, income losses incurred by the victim during the prenatal, delivery, and post-partum periods of the pregnancy where it is carried to term, or incurred by a victim through the post-abortion recovery period should similarly be covered. Subsequent income losses, such as those arising from being required to remain at home to care for the child, are probably covered, because the Act allows such compensation which "the victim would have earned had [s]he not been injured."<sup>174</sup> Had

171. *Id.* § 299B.02(7)(a)(iii).

172. This approach was employed by Chief Justice Marshall in *McCullough v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819) when construing the term "necessary" in the context of the "necessary and proper" clause of U.S. CONST. art. I, § 8. The Court rejected the contention that necessary meant absolutely and indispensably necessary because that construction would exclude the choice of means and restrict Congress to the most direct and simple method, thereby emasculating the powers created by the Constitution. Rather, the Court construed necessary as convenient, useful, or essential. 17 U.S. at 414-19. The intended purpose of the Minnesota Crime Victims Reparations Act is humanitarian and thus the term should be construed in that context. Therefore, by analogy, the expenses for necessary medical, psychological, and psychiatric services covered by the Act would be those useful and essential to treatment of the rape victim, and not restricted to indispensable treatment.

173. *See Roe v. Wade*, 410 U.S. 113 (1973). The coverage provisions of the Act do not constitute an invasion of the rape victim's fundamental right to decide whether or not to terminate her pregnancy by obtaining an abortion. Since a victim is compensated for actual losses for medical treatment, there is no benefit to be gained by having the child, and thus no interference with the mother's decision regarding an abortion. It is debatable whether there is an incentive to the mother to have the child because the Act allows recovery for loss of income. However, because of the \$10,000 limitation on recovery, the mother would exhaust most of even a maximum award by the time the child is born. When the \$10,000 is finally exhausted, the full burden for supporting the child would be on the mother. It is possible someone would have a child so she could obtain welfare payments, yet it is improbable that all these remote considerations could constitute state interference so as to render the coverage provisions of the Act unconstitutional. Rather, the question presented by the Act is whether the victim, once having made the decision to obtain an abortion, has the right to seek compensation from the Board for those abortion-related expenses.

174. MINN. STAT. § 299B.02(7)(a)(iii) (1974). No claim for loss of income under these circumstances has been filed to date. However, the Executive Director has indicated the Board would

the victim not been pregnant she would have had no child for which to care and thus no loss of income, as there would have been no need to remain at home.

## 2. *Mental or Nervous Shock*

Minnesota joins only six other states<sup>175</sup> in expressly allowing compensation for expenses incurred in treating mental or nervous shock.<sup>176</sup> Under the Minnesota Act, a claimant may recover for economic loss, which is defined as actual economic detriment incurred as a direct result of injury. "Injury" is defined as "actual bodily harm" which "includes mental or nervous shock." The Act includes within the definition of "economic loss" "reasonable expenses incurred for psychological or psychiatric products, services or accommodations where the nature of the injury or the circumstances of the crime are such that the treatment is necessary to the rehabilitation of the victim."<sup>177</sup>

While "mental or nervous shock" lacks a statutory definition,<sup>178</sup> the inclusion of the phrase within the definition of "*actual* bodily harm" might at first glance appear to establish a requirement that any mental injury must be accompanied by a physical manifestation of the injury, such as vomiting or insomnia. This construction would be compatible with the tort law concept in some jurisdictions where courts, distrustful of the validity of claims for mental injury, condition recovery on the showing of a physical manifestation.<sup>179</sup> A more careful analysis of the language of the definition, however, shows that mental or nervous shock is merely *included* within the definition of

probably grant a claim for loss of income. Letter from Samuel L. Scheiner, Executive Director of the Minnesota Crime Victims Reparations Board to William Mitchell Law Review, Sept. 1, 1976.

175. See DEL. CODE ANN. tit. 11, § 9002(7) (Supp. 1975); HAWAII REV. STAT. § 351-2 (1968); LA. REV. STAT. ANN. § 46:1802(7) (West Supp. 1976); N.J. STAT. ANN. § 52:4B-2 (Supp. 1976); R.I. GEN. LAWS ANN. § 12-25-2(4) (Supp. 1975); Act of June 6, 1976, ch. 344, [1976] Wis. Legis. Serv. 1619 (West), *to be codified as* Wis. STAT. § 949.01(4).

176. Nevada, Pennsylvania, and Washington require bodily injury. See Nev. Rev. Stat. § 217.050 (1975); Act of June 6, 1976, act 139, [1976] Pa. Legis. Serv. 274 (West), *to be codified as* PA. STAT. ANN. tit. 71, § 180-7; WASH. REV. CODE ANN. § 7.68.020(3) (Supp. 1976). Four states limit the definition of victim to persons who suffer a physical injury. See CAL. GOV'T CODE § 13960(a)(1) (West Supp. 1976); MD. ANN. CODE art. 26A, § 2(e) (1973); N.Y. EXEC. LAW § 621(5) (McKinney 1972); VA. CODE ANN. § 19.2-368.2 (Supp. 1976). Massachusetts provides for compensation "for medical care or other services necessary as a result of the injury" but states "[n]o compensation shall be paid unless . . . such crime directly resulted in personal physical injury." MASS. GEN. LAWS ANN. ch. 258A, § 5 (Supp. 1976). Two states empower their boards to order compensation for personal injury actually and reasonably incurred. See ALASKA STAT. § 18.67.110(1) (1974); GA. CODE § 47-523(1) (1974). And one of those states further compensates for "any other loss . . . which the board determines to be reasonable." ALASKA STAT. § 18.67.110(4) (1974). North Dakota defines victim as "a person who suffers a personal injury," and includes a section regarding the evidence required when the claimant's mental or emotional condition is in issue. N.D. CENT. CODE §§ 65-13-03(6)(g), -10 (Supp. 1975).

177. MINN. STAT. § 299B.02(7)(a)(ii) (1974).

178. Likewise, the six states which expressly allow compensation for mental or nervous shock fail to define the term. See statutes cited note 175 *supra*.

179. W. PROSSER, *supra* note 157, § 54.

"actual bodily harm," the language of inclusion thus expressly incorporating an injury within the meaning of actual bodily harm which has traditionally not been so conceptualized. The better view, therefore, is that no physical manifestation of mental or nervous shock is necessary.<sup>180</sup>

While the term "mental or nervous shock" is susceptible of varying constructions ranging from minor emotional disturbances to more severe problems, such as acute psychoses,<sup>181</sup> which require institutionalization, the policies and other language of the Act provide a more definite meaning. The Act attempts to put an eligible claimant as nearly as possible in the same economic condition he was in prior to the occurrence of the crime. That the Act attempts to do this with respect to the victim's physical aspects is beyond question, because the Act provides reimbursement for reasonable expenses for necessary medical, chiropractic, and dental products and services, including "drugs, appliances and prosthetic devices."<sup>182</sup> By including "mental or nervous shock" within the definition of injury, the Act also appears to attempt to return the victim to his prior state of mental well-being. Thus, the phrase "mental or nervous shock" should be viewed as a legislative renunciation of the distinction in the way of treating bodily and mental injuries and as an expression of a policy that both types of injury are to be accorded recovery.

The limits of recovery for any type of mental injury are then to be established by the provisions permitting recovery for reasonable expenses incurred for psychological or psychiatric products and services which are necessary for the victim's rehabilitation. Because this provision parallels the language permitting recovery for medical expenses for bodily injury, the same factors used by the Board in considering what is "reasonable" and "necessary" for the treatment of bodily injury should be equally applicable to recovery for mental injury-related expenses. Because the state of the science for the treatment of mental injury is not as precise as that for the treatment of bodily injury, the Board should perhaps be more flexible in the determination of whether a psychological or psychiatric treatment is "necessary" than it would

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180. This recognizes that psychological injuries may involve as much actual harm as physical injuries. Prosser points out that fright, shock, grief, anxiety, rage, and shame are recognized by medical science to be physical injuries in the sense that they "produce well marked changes in the body, and symptoms that are readily visible to the professional eye." W. PROSSER, *supra* note 157, § 12, at 50-51. See also 5 HAWAII CRIMINAL INJURIES COMPENSATION COMM'N, ANN. REP. case No. 72-58 (1972) (medical expenses resulting from emotional tension and shock awarded to child who assisted police in apprehending a criminal). For a discussion of the physical repercussions from unreleased emotional disturbances, see Goodrich, *Emotional Disturbance as Legal Damage*, 20 MICH. L. REV. 496 (1922).

181. In M. BLINDER, *PSYCHIATRY IN THE EVERYDAY PRACTICE OF LAW* § 6a., at 19 (1973) the author describes psychoses as:

profound, sweeping mental disorders characterized by partial or total loss of contact with, or distortion of reality; severe disturbances of perception, thought processes, feelings and behavior; retreat from or perversion of social relationships; and often a disintegration of personality structure, leading to the release of processes which ordinarily operate only unconsciously.

182. MINN. STAT. § 299B.02(7)(a)(i) (1974).



had the injury been bodily in nature.

Other problems arise where the expenses incurred for psychological and psychiatric care are due to the aggravation of a preexisting physical or mental illness. What must be determined is whether the expenses would have been incurred even had the injury not occurred. If the victim had sought treatment for a similar condition prior to the incident, there is good reason for the Board to prorate any expenses. On the other hand, if the victim never incurred expenses prior to the crime for a similar condition, he should be awarded full compensation for his losses. In aid of this determination, the Board may require a mental or physical examination<sup>183</sup> and may obtain physicians' and psychiatrists' reports regarding prior treatment.<sup>184</sup>

### F. Coverage

The Act provides for the reimbursement of "reasonable expenses incurred for necessary medical, chiropractic, hospital, . . . and dental products, services, or accommodations," as well as for lost income.<sup>185</sup> This is typical of the basic coverage provisions of the acts of other states.<sup>186</sup> The Minnesota Act is also similar to acts of other states in containing no provision for recovery of property loss incurred as a result of a crime. Beyond these basic provisions, the extent of coverage varies among the states. The Minnesota Act, in extending coverage to expenses incurred for rehabilitative services, reflects an awareness that recovery for medical and hospital expenses and for lost income is inadequate to compensate a victim for losses resulting from a crime.

#### 1. Rehabilitative Services

The Act provides recovery for reasonable expenses incurred for necessary rehabilitative products, services, or accommodations.<sup>187</sup> The tools of rehabilitation, physical medicine and psychiatry, are used to achieve the goal of restoring "the handicapped to the fullest physical, mental, social, vocational and economic usefulness of which they are capable."<sup>188</sup> The Minnesota Act

183. *Id.* § 299B.06, subd. 2(d).

184. *Id.* § 299B.06, subd. 2(a).

185. *Id.* §§ 299B.02(7)(a)(i), .02(7)(a)(iii), .02(7)(b)(ii).

186. See ALASKA STAT. § 18.67.110 (1974), *as amended*, (Supp. 1975); CAL. GOV'T CODE § 13960(2)(d) (West Supp. 1976); DEL. CODE ANN. tit. 11, § 9002(8) (Supp. 1975); GA. CODE § 47-523 (1974); HAWAII REV. STAT. § 351-33 (1968); ILL. ANN. STAT. ch. 70, § 74 (Smith-Hurd Supp. 1976); LA. REV. STAT. ANN. § 46:1802(8) (West Supp. 1976); MD. ANN. CODE art. 26A, § 12(b) (Supp. 1975); MASS. GEN. LAWS ANN. ch. 258A, § 5 (Supp. 1976); NEV. REV. STAT. § 217.200 (1975); N.J. STAT. ANN. § 52:4B-12 (Supp. 1976); N.Y. EXEC. LAW § 631(2) (McKinney 1972); N.D. CENT. CODE §§ 65-13-03(6)(a) to (f) (Supp. 1975); R.I. GEN. LAWS ANN. § 12-25-2(7) (Supp. 1975); WASH. REV. CODE ANN. §§ 7.68.070-.080 (Supp. 1976); Act of June 6, 1976, ch. 344, § 3, [1976] Wis. Legis. Serv. 1620-21 (West), *to be codified as* WIS. STAT. § 946.06.

187. MINN. STAT. §§ 299B.02(7)(a)(i), .02(7)(b)(ii) (1974).

188. Marryott & Cook, *Rehabilitation of Claimants in Tort Cases*, 29 INS. COUNSEL J. 231, 231 (1962), *quoting* the National Council on Rehabilitation. See generally K. BROWN, MEDICAL PROBLEMS AND THE LAW 153-65 (1971).

thus recognizes that although compensation for medical expenses may help "put the pieces" back together, in many cases it falls short of returning the victim as nearly as possible to his prior productive capacity.

While the Act fails to define "rehabilitative services," it contains no words of limitation. The Act, therefore, should be interpreted to permit compensation for a wide range of services.<sup>189</sup> Certainly, physical therapy is within the meaning of the term. In addition, academic, business, and vocational training, as well as career and personal counseling, should be encompassed,<sup>190</sup> because these services are aimed at preparing the victim for "the best possible life compatible with his abilities and disabilities."<sup>191</sup> The increased cost of providing coverage for these expenses is far outweighed by the long-term societal benefits: restoration of the victim's personal dignity and self-reliance with a concomitant reduction in the potential burden on the taxpayer to provide welfare benefits and other social services to the permanently disabled.<sup>192</sup>

## 2. Property Damage

The Minnesota Act, like nearly all acts in other states, does not provide coverage for the loss of property incurred as a result of crime.<sup>193</sup> Criminally-inflicted property damage in the United States is conservatively estimated to be \$4 billion per year,<sup>194</sup> an amount which is clearly beyond the existing capabilities of the states to compensate.<sup>195</sup> The restriction of payment of repara-

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189. Had the legislature intended to limit the types of rehabilitative services, it could have used limiting language similar to that of the no-fault statute, where the responsibility of a reparation obligor is limited to the cost of treatment, training, and courses for rehabilitation which are reasonable in relation to rehabilitative effects and likely to "contribute substantially to medical or occupational rehabilitation." MINN. STAT. § 65B.45, subd. 1 (1974).

190. Congress has found these services are necessary for rehabilitation and has therefore included them in the Vocational Rehabilitation Act of 1973, tit. I, § 103(a), 29 U.S.C. § 723(a) (Supp. V, 1975) for the purpose of preparing handicapped persons for gainful employment to the extent of their capabilities, *id.* tit. I, § 100(a), 29 U.S.C. § 720(a) (Supp. V, 1975).

191. K. BROWN, *supra* note 188, at 155.

192. Conley, *A Benefit-Cost Analysis of the Vocational Rehabilitation Program*, 2 J. HUMAN RESOURCES 226, 243-44 (1967).

193. Alberta, British Columbia, Manitoba, and New Brunswick statutes and British and Ontario practices allow compensation for damage to clothing, eyeglasses, dentures, and other property on the person at the time of injury. Lamborn, *The Scope of Programs for Governmental Compensation of Victims of Crime*, 1973 U. ILL. L.F. 21, 25. Hawaii allows compensation up to a \$10,000 limit to citizens who incur property damage in preventing the commission of a crime, in apprehending criminals, or in assisting police to do so. HAWAII REV. STAT. §§ 351-51, -52(4), -62 (1968). California has a similar statute compensating citizens up to a \$5,000 limit. CAL. GOV'T CODE §§ 13970, 13973, 29631 (West Supp. 1976).

194. PRESIDENT'S COMM'N ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: CRIME AND ITS IMPACT—AN ASSESSMENT 44 (1967). In Minnesota in 1974 almost \$16 million of stolen property was not recovered. See MINNESOTA BUREAU OF CRIMINAL APPREHENSION, MINNESOTA CRIME INFORMATION 56 (1974).

195. Samuels, *Compensation for Criminal Injuries in Britain*, 17 U. TORONTO L.J. 20, 23 (1967).

tions to claims arising out of crimes of violence against the person appears to be due largely to both the enormous economic burden a provision allowing recovery for property loss would impose and the commonly held belief that crimes against the person are more serious than those involving only damage to property.<sup>196</sup>

This view fails to recognize that a property crime, such as arson, may cause more serious and permanent injury to a person's earning capacity<sup>197</sup> than would a temporary personal injury.<sup>198</sup> The cost argument is mitigated somewhat by the fact that property damage is often covered by insurance, which constitutes a "collateral source" under the Act, which would therefore bar recovery from state funds for that amount. Furthermore, over one-third of the value of stolen property is recovered by the police.<sup>199</sup> Finally, coverage under the Act would enable victims who are unable to afford private insurance to recover for losses which to them are very substantial.<sup>200</sup>

On the other hand, property damage coverage would increase the filing of fraudulent claims, because it is probable that more people would destroy property than injure themselves in order to obtain compensation.<sup>201</sup> In addition, the temptation to exaggerate the amount of actual damage or to attribute any kind of property damage to a criminal act would be greater if coverage were allowed.<sup>202</sup> The costs of administering the reparations program would increase due to the time-consuming investigations which would be necessary to discern possible fraud. Mainly for the reason of increased cost, it is likely that the citizens and legislators of Minnesota will be content to limit reparations to personal injury losses<sup>203</sup> and to defer to private sources for coverage of property losses resulting from crimes.

### 3. Limitations on Recovery

Several significant provisions in the Act limit the amount of recovery in a given case. The first limitation is related to the victim's ability to recoup the loss from "collateral sources," because the Act requires the amount recovered from such a source to be deducted from the total economic loss incurred.<sup>204</sup> The second limitation is a \$10,000 ceiling on the total award arising out of a single incident.<sup>205</sup> In addition, the award is to be reduced by the first

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196. Childres, *Compensation for Criminally Inflicted Personal Injury*, 39 N.Y.U.L. REV. 444, 460 (1964). See also T. SELLIN & M. WOLFGANG, *THE MEASUREMENT OF DELINQUENCY* 298 (1964).

197. As, for example, by destruction of an individual's small business.

198. Lamborn, *supra* note 122, at 27.

199. See, e.g., FED. BUREAU OF INVESTIGATION, *UNIFORM CRIME REPORTS* 120 (1973).

200. An assumption underlying the Act is that those who can afford insurance coverage for personal injuries will not refrain from purchasing it on the basis of the coverage afforded by the Act. This assumption is equally applicable to the purchase of property insurance.

201. Lamborn, *supra* note 122, at 28.

202. *Id.*

203. See *id.* at 27.

204. MINN. STAT. § 299B.04(1) (1974).

205. *Id.* § 299B.04(3).

\$100 of loss<sup>206</sup> and by an amount commensurate with the contributory misconduct of the victim.<sup>207</sup>

#### a. Collateral Source

The Act provides that the total amount awarded will equal the economic loss reduced to the extent the loss is recouped from a "collateral source."<sup>208</sup> Collateral source is defined as "a source of benefits or advantages for economic loss otherwise reparable . . . which the victim or claimant has received, or which is readily available to him. . . ."<sup>209</sup> The Act then enumerates the sources which are considered to be collateral, including benefits from the offender, certain governmental agencies, social security, medicare, medicaid, state-required temporary non-occupational disability insurance, workers' compensation, employer wage continuation programs, insurance proceeds, prepaid hospital or health service care or disability benefit contracts, and private gifts and donations.<sup>210</sup> This enumeration, however, raises several problems, as does the phrase "readily available."

#### (1) Sources of Recovery

The Act provides that "collateral sources" include benefits from the United States government or one of its agencies, or a state or an instrumentality of two or more states.<sup>211</sup> This provision could be interpreted to include unemployment compensation, monthly welfare and Veterans Administration benefits, and regular Social Security payments. The reason for deducting benefits from collateral sources, however, is to prevent a victim from profiting from double recovery of benefits.<sup>212</sup> The intent of the entire Act is merely to recompense the victim for actual crime-related expenses.<sup>213</sup> The collateral funds enumerated in the Act do not involve payments which the victim would have received whether or not a crime had been committed but only those payments from "a source of benefits . . . for economic loss."<sup>214</sup> Since economic loss is not recoverable unless it is the direct result of a criminal act,<sup>215</sup> it appears that the purpose of the Act is only to deduct benefits from collateral sources which were made directly as a result of losses incurred as a result of the injury or death from a crime.<sup>216</sup>

206. *Id.* § 299B.04(2).

207. *Id.*

208. *Id.* § 299B.04(1).

209. *Id.* § 299B.02(4).

210. *Id.* §§ 299B.02(4)(a)-(i).

211. *Id.* § 299B.02(4)(b).

212. Cameron, *Compensation for Victims of Crime: The New Zealand Experiment*, 12 J. PUB. L. 367, 374 (1963).

213. See Lamborn, *supra* note 122, at 66 & n.293; 2 HAWAII CRIMINAL INJURIES COMPENSATION COMM'N, ANN. REP. 7-8 (1970).

214. MINN. STAT. § 299B.02(4) (1974).

215. See *id.* §§ 299B.02(7), (9).

216. The attorney general has stated that free medical care given to an indigent victim is a collateral source under the Act and, therefore, the medical center could not recover the cost

"[P]roceeds of a contract of insurance payable to the victim for economic loss which he sustained because of the crime"<sup>217</sup> and proceeds of a contract for prepaid hospital and health care services<sup>218</sup> are also listed as "collateral sources." Because the crime victims program is considered to be an alternative means of compensation, the program is unnecessary where insurance covers a victim's loss. Allowing a claimant to recover where he has an adequate existing source would, arguably, allow a profit to be made from the crime at the taxpayers' expense.<sup>219</sup> Yet injustice will arise because one is penalized for having the foresight to obtain private coverage. It has even been suggested that confining benefits to the uninsured "may be so discriminatory as to be unconstitutional"<sup>220</sup> and that the compensation of the rich and the poor alike is preferable to characterizing the awards as charity to the needy. The resulting economic burden upon the state if insured claimants were eligible for compensation is difficult to determine. Therefore, to weigh this burden against the benefits derived from encouraging individuals to provide privately for unforeseeable losses caused by the commission of a crime is impossible. Burdening the taxpayers in cases where the claimant has not taken advantage of other sources either provided by society or by an employer as a cost of doing business does not seem necessary. But insurance coverage is a matter of personal choice, based largely upon financial ability and it clearly seems to be beyond the Board's power to decide whether insurance was a "readily available" collateral source to a claimant who has no such coverage. The Board will have to proceed on the assumption, whether valid or not, that those who can afford to do so will have taken out private insurance.<sup>221</sup>

Life insurance proceeds are not included within the definition of collateral sources.<sup>222</sup> This exclusion is justifiable on the grounds that a maximum award

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either as a purchaser or supplier of medical services, products, or accommodations. Op. Minn. Att'y Gen. 1032 (Feb. 6, 1976), *reprinted in* 9 MINNESOTA LEGAL REGISTER 10 (1976).

217. MINN. STAT. § 299B.02(4)(g) (1974).

218. *Id.* § 299B.02(4)(h).

219. "[I]t was not the intention of the Legislature that the injured party be paid twice." Lamborn, *supra* note 122, at 66, *quoting* 1 ONTARIO CRIMINAL INJURIES COMPENSATION BOARD, ANN. REP. 14 (1971). *Accord*, Cameron, *supra* note 212, at 374.

220. *Round Table—Compensation For Victims of Criminal Violence*, 8 J. PUB. L. 191, 210 (1959) (comments of H. Weihofen).

221. A possible solution to avoid penalizing those who have purchased insurance would be to deduct the premiums paid on the policy from the amount received thereunder and then to deduct the adjusted amount from the total economic loss. For example, if a policy owner paid \$3,000 in premiums for health insurance and received \$20,000 on it as a result of the crime, the Board could deduct the premiums from the amount received, leaving \$17,000. If the total loss were \$25,000 and the claimant had no other collateral sources, the Board could deduct the \$17,000 from the \$25,000 total loss and \$8,000 would be compensable under the program. This may prove to be the most equitable result for the claimant under the circumstances and would prevent undue burdens on the taxpayers. *See* Lamborn, *supra* note 122, at 68, *citing* CANADIAN CORRECTIONS ASSOCIATION, COMPENSATION TO VICTIMS OF CRIME AND RESTITUTION BY OFFENDERS 13 (Feb. 22, 1968).

222. MINN. STAT. § 299B.02(4) (1974).

from the Board, if added to the proceeds of a life insurance policy, will never fully compensate the claimant for losses suffered as a result of the victim's death. In addition, to deprive the survivors of the benefit of their vested interest in a life insurance policy merely because the victim died as a result of the commission of a crime would be unfair. The exclusion was also patterned after the procedure in actions for wrongful death where life insurance is not a consideration in awarding payment<sup>223</sup> and appears to be sound.

(2) "Readily Available"

A "collateral source" under the Act can be one which the victim or claimant has received or one which is "readily available to him."<sup>224</sup> The term "readily available"<sup>225</sup> is ambiguous. Perhaps it refers to sources which the claimant knows exist for his benefit; or perhaps to those which exist and are available whether or not the claimant knows of their existence. It also may refer to sources which will become available to the claimant more quickly than would an award from the Board. More specifically, a determination must be made as to whether this provision places a duty upon the claimant to at least apply for recovery from the collateral source; if so, whether the claimant must exhaust all appeals available from an adverse decision by the organization or agency to whom an application for a collateral source has been made; and, what happens to the claimant's claim before the Board during the period an application for recovery from the collateral source is pending.

The primary reason for subtracting collateral source payments from an award under the Act appears to be the placement of the financial burden initially upon sources other than the state.<sup>226</sup> Recovery under the Act is then one of last resort, and the term "readily available" should be interpreted with this end in mind.

As a first step, the claimant should be made aware of all potential sources of recovery for the type of economic loss he has suffered. The claimant may have private sources of recovery, but be unaware of public sources. Thus, to maximize reliance on collateral sources, the Board should inform each claimant of the existence of public sources. This is only indirectly attempted now by requiring the claimant to complete a form<sup>227</sup> to indicate from which of

223. See, e.g., *Wright v. Engelbert*, 193 Minn. 509, 513, 259 N.W. 75, 77-78 (1935).

224. MINN. STAT. § 299B.02(4) (1974).

225. The term was adopted from the UNIFORM CRIME VICTIMS REPARATIONS ACT § 1(d). *Tape of Meeting on S.F. 884 Before the Subcomm. on Criminal Law & Corrections of the Minnesota Senate Comm. on the Judiciary* (Oct. 9, 1973).

226. The purpose of the Act is not frustrated because the individual with no or limited sources of compensation remains protected. See *Tape of Meeting on S.F. 884 Before the Subcomm. on Criminal Law & Corrections of the Minnesota Senate Comm. on the Judiciary* (Oct. 9, 1973).

227. Minn. Dep't of Public Safety Form No. 8004 (Mar., 1976) lists the following as collateral sources: payments from the offender; social security; medicare; medicaid; workers' compensation; employer's wage continuation program; insurance; health care or disability program; federal, state, or local governments; and donation or gift. There is also space for the claimant to indicate recovery from other sources.

the specified or other sources funds have been received or are readily available.

After the claimant is made aware of the potential sources, a determination must be made as to which sources are "readily available" so as to permit a deduction from total economic loss. The question arises whether or not a claimant must take affirmative steps to obtain funds from the collateral sources of which he is aware in order for them to be considered "readily available." In the area of insurance law, there exists a split of authority on the question of whether a claimant has a duty to apply to a collateral source where the language of a policy requires any amount "payable" from such sources to be deducted from the policy award.<sup>228</sup> One view is that an implied duty exists, whereby the insured must take reasonable steps to seek reimbursement from these sources.<sup>229</sup> A claimant thus cannot prevent funds from being "payable" by this "unjustified inaction."<sup>230</sup> The other view is that no such obligation can be implied, because of the court's inability to formulate guidelines establishing the degree of effort which must be expended in pursuing the claim.<sup>231</sup> In most instances, a claimant is likely to turn to other sources before turning to the Act, especially where the loss incurred is substantial vis-à-vis the statutory recovery limitation. In those cases where he does not, and the Board feels the claimant would qualify for such collateral recovery, the Board should be able to impose a duty to apply. However, the Board's award should be delayed only until an initial decision is made by the agency or organization to which application had been made. Requiring a delay past an initial decision from the collateral source and requiring the claimant to pursue recovery upon appeal would appear to transgress the plain meaning of "readily available." The Board could then grant the award<sup>232</sup>

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228. Compare, e.g., *Callaway v. Nationwide Mut. Ins. Co.*, 248 A.2d 617 (Del. Super. Ct. 1968) with, e.g., *Burkett v. Continental Cas. Co.*, 271 Cal. App. 2d 360, 76 Cal. Rptr. 476 (1969).

229. See *Callaway v. Nationwide Mut. Ins. Co.*, 248 A.2d 617, 620 (Del. Super. Ct. 1968).  
230. *Id.*

231. See *Burkett v. Continental Cas. Co.*, 271 Cal. App. 2d 360, 363, 76 Cal. Rptr. 476, 478 (1969).

232. A claimant with an urgent need for the reparations award need not wait until there has been an initial decision by the collateral source since the Board has the power to make an emergency award where it appears the grant will probably be made and that undue hardship would result if immediate payment were not made. MINN. STAT. § 299B.06, subd. 2(g) (1974). Minnesota has wisely chosen not to limit the amount of the emergency award. Some states have limited the amount. See ALASKA STAT. § 18.67.120(1) (Supp. 1975) (\$1,500); MD. ANN. CODE art. 26A, § 11 (1973) (\$500); N.Y. EXEC. LAW § 630 (McKinney 1972) (\$500). The period of time for which an emergency award will be made depends on the factors in each case. Thus, if it appears that a claim will take a short time to be processed or if the claimant has income from a collateral source, a small emergency award will be made. If the case will take a protracted period of time to determine, however, or if the claimant is still being treated for his injuries, an award for four to six months may be granted. Letter from Samuel L. Scheiner, Executive Director of the Minnesota Crime Victims Reparations Board to William Mitchell Law Review, Aug. 24, 1976. Where an emergency award is not involved, the Board now waits for a final decision by the collateral source before it makes an award under the Act. *Id.*

and can protect itself in either instance by exercising its right of subrogation<sup>233</sup> wherein the claimant must agree to cooperate with the Board.<sup>234</sup> In addition, the Board may reopen any award upon discovery that a claimant has subsequently received an award from a collateral source.<sup>235</sup>

### *b. Maximum Limit*

The overall effect of the deduction of benefits recovered from "collateral sources" is to greatly decrease the taxpayers' burden of financing the compensation program.<sup>236</sup> Another attempt to limit the cost of the program is the statutory \$10,000 maximum limit on recovery per incident. Without an upper limit, crime victims reparations programs might eventually prove to be too expensive to maintain, although several practical and persuasive arguments can be made against its retention.

First, the limit is arbitrary. An entire award of \$10,000 can be consumed by about three months of hospital care, without any allowance for items such as doctors' fees, x-rays, operations, support loss, physical therapy, or past and future earnings.<sup>237</sup> In addition, under the present limitation, a family with one dependent would be able to recover the same amount as a family with several dependents because the limit is applied per incident.<sup>238</sup> Furthermore, the absence of coverage for pain and suffering,<sup>239</sup> which usually drastically raises

233. MINN. STAT. § 299B.10 (1974) subrogates the state to "the claimant's rights to recover benefits or advantages for economic loss" from available or readily available sources.

234. 9 MINN. REGS., REPAR. BOARD RB7-(b) (1974).

235. MINN. STAT. § 299B.06, subd. 2(h) (1974) gives the Board the power to "reconsider any decision granting or denying reparations or determining their amount."

236. As a result of the adoption of a provision by the 1972 Hawaii legislature for the deduction of collateral sources from the final award, payment for medical expenses went down from 35.6 percent to 12.7 percent and the amount of the average award dropped from \$2,443.14 to \$1,416.09. 5 HAWAII CRIMINAL INJURIES COMPENSATION COMM'N, ANN. REP. 15 (1972). In Alaska two-thirds of the claims denied were because of recovery from collateral sources. 1 ALASKA VIOLENT CRIMES COMPENSATION BOARD, ANN. REP. 10 (1973).

237. The average hospital cost per day in Minnesota in 1973 was \$94.54, well below the national average of \$114.56. INSURANCE INFORMATION INSTITUTE, INSURANCE FACTS 56-57 (1975). At that rate, a \$10,000 award would be completely exhausted within 106 days from hospital charges alone. Blue Cross and Blue Shield of Minnesota, which cover approximately one-quarter of the population, reported the average daily hospital charge in 1975 to be \$138.61, up 15.3% over 1974 figures. The Minneapolis Star, Apr. 16, 1976, § A, at 16, col. 4. The maximum award would thus be absorbed within 73 days.

238. MINN. STAT. § 299B.04(3) (1974).

239. Reparations acts in most other states do not provide compensation for pain and suffering. Minnesota appears to follow this trend by not specifically including pain and suffering within the definition of "injury." Furthermore, recovery for pain and suffering cannot be implied since the Act only allows recovery for "economic loss," whereas the concept of pain and suffering usually involves an intangible personal loss rather than an economic loss. While "pain and suffering" itself is not within the ambit of recovery under the Act, parts of the concept may give rise to compensation under other provisions of the Act. At common law, for instance, pain and suffering includes loss of dignity, loss of expectation of happiness, loss of opportunity and



the cost of a program,<sup>240</sup> mitigates against the need for maintaining an upper limit. Finally, based on the experience of other states, excessive increases in the total cost of the program are not an inevitable result of the elimination of the maximum limit on recovery. In one year in Hawaii, only five of 164 awards were cut off at the maximum limit.<sup>241</sup> Eighteen percent of the awards in New York<sup>242</sup> and 14 percent in New Jersey<sup>243</sup> are for the maximum amount. The experience of the Board in Minnesota has been consistent with the experiences of these other states.<sup>244</sup>

Convincing legislators to approve a completely open-ended program would be extremely difficult. At present "[t]here is general agreement that the amounts of awards in a tax supported program should be less than jury verdicts in personal injury lawsuits."<sup>245</sup> Yet some form of compromise might be possible. One alternative is to impose a lower maximum limit for each dependent where multiple dependents file claims on the death of a crime victim. An even better approach would be to remove the upper limit on medical benefits and impose the existing limit only on other losses. With

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faculties. Lamborn, *supra* note 122, at 33-34. If these losses result in a mental injury of the nature covered by the "mental or nervous" shock provision of the Act, economic losses incurred from such an injury would be compensable.

240. Floyd, *Massachusetts' Plan to Aid Victims of Crime*, 48 BOSTON U.L. REV. 360, 368 (1968). Similarly, the experience has been that in cases involving pain and suffering insurance settlements have often been disproportionately high in relation to the actual physical injury suffered. Accident victims, aware of the difficulty of determining the value of pain and suffering with any precision, often pad their medical bills, confident they will recover many times that amount. Insurance companies, faced with a large number of small claims in which the value of pain and suffering must be determined, end up pouring a disproportionate amount of the insurance pool into satisfying those nuisance claims rather than litigating them. See J. O'CONNELL & R. SIMON, PAYMENT FOR PAIN AND SUFFERING: WHO WANTS WHAT, WHEN & WHY? 6 (1972).

Furthermore, the experience of the Hawaii Criminal Injuries Compensation Commission has produced similar results. Thirty-eight percent of Hawaii's awards in a one-year period were for pain and suffering. 5 HAWAII CRIMINAL INJURIES COMPENSATION COMM'N, ANN. REP. 15 (1973). The Hawaii Board has indicated that the most difficult aspect of its deliberations is recovery for pain and suffering and has questioned the desirability of this type of compensation. 1 HAWAII CRIMINAL INJURIES COMPENSATION COMM'N, ANN. REP. 4-5 (1969).

241. 5 HAWAII CRIMINAL INJURIES COMPENSATION COMM'N, ANN. REP. app. A.1-10 (1972). Compensation under the Hawaii act is limited to \$10,000. HAWAII REV. STAT. § 351-62(b) (1968).

242. Lamborn, *supra* note 122, at 53. The maximum limit of \$15,000 applies only to awards for loss of earnings or support. N.Y. EXEC. LAW § 631 (McKinney Supp. 1975).

243. 1 NEW JERSEY VIOLENT CRIMES COMPENSATION BOARD, ANN. REP. 3 (1973).

244. During the first two years the program was in operation, only three out of 269 awards were for the maximum amount. Board Register, *supra* note 72, addendum #2. One explanation given for this low percentage is that in those cases where a victim has died and left dependents, they have been eligible under the Social Security Act for survivor's benefits. See Social Security Act, 42 U.S.C. § 402(d)(1) (1970). The amount received under the Social Security Act is then deducted as a collateral source from the total amount of the economic loss incurred. Letter from Samuel L. Scheiner, Executive Director of the Minnesota Crime Victims Reparations Board to William Mitchell Law Review, Aug. 24, 1976.

245. Comment, *Compensation for Victims of Crime*, 33 U. CHI. L. REV. 531, 550 (1966).

rapidly-rising medical and hospital expenses,<sup>246</sup> it seems only realistic to exclude medical expenses from those losses which fall under the arbitrary maximum limitation. This would better serve the program goal of benefiting those least able to bear these unexpected expenses. In New York, where there are no medical limitations, the Board has not found the additional cost to be either exorbitant or prohibitive.<sup>247</sup>

Another change which should be carefully considered is an expansion of the Board's power to allow it to reconsider its decisions granting or denying reparations or determining their amount.<sup>248</sup> Thus, upon determining that the claimants had used the entire amount of the award for medical expenses and support, and after satisfying itself that the claimants had exhausted all other possible financial sources, the Board could go beyond the maximum limitation and award periodic payments for loss of earnings or support. The latter amount could be limited by the median income of a like-sized family in the area<sup>249</sup> and the Board could be required to make periodic reinvestigations to determine when circumstances had changed sufficiently so that the relief could be terminated.

A further possibility would be to remove the maximum limit whenever a "good Samaritan" or his dependent has filed a claim. This would be an appropriate way of recognizing the efforts of a "good Samaritan" who has risked the possibility of injury or death in an effort to benefit the public safety.<sup>250</sup>

246. From 1960 to 1975 the consumer price index for medical care in general rose from 79.1 to 166.8 and for hospital semiprivate rooms from 57.3 to 230.1. U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES 423 (96th ed. 1975). See note 237 *supra* for the rate of increase for hospital charges alone in Minnesota.

247. *Tape of Joint Meeting on S.F. 884 Before the Minnesota Senate Comm. on the Judiciary and the Minnesota House Comm. on Crime Prevention & Corrections* (Nov. 13, 1973) (remarks of Stanley Van Rensselaer, Chairman of the New York Crime Victims Compensation Board).

248. MINN. STAT. § 299B.06, subd. 2(h) (1974).

249. Lamborn, *supra* note 122, at 51-52.

250. While the Act provides compensation for economic loss incurred as a result of an attempt to prevent a crime or to apprehend a person suspected of engaging in a crime, see MINN. STAT. §§ 299B.02(9)(b)-(c) (1974) (definition of "victim"), Minnesota law permits recovery of \$50,000, without proof of loss, by the spouse or dependent parents or children of a "peace officer" killed in the line of duty. *Id.* §§ 352E.01-.05 (Supp. 1975). Peace officer is defined to mean, *inter alia*, a "good samaritan" who complies with the request or direction of a peace officer to assist him. *Id.* § 352E.01, subd. 2(h). Thus a "good samaritan" under the "peace officer act" can qualify as a "victim" under the Crime Victims Reparations Act. The scopes of the two acts differ, however, because one provides limited recovery for otherwise uncompensated loss and the other operates, in effect, as a life insurance policy on the victim. Both acknowledge the benefit to the public as a whole by the efforts of a "good samaritan."

In addition, it is unlikely that recovery of the \$50,000 under the "peace officer act" could be deducted as a collateral source. First, the analogy to a life insurance contract would require exclusion from the definition of "collateral source." See notes 222-23 *supra* and accompanying text. More importantly, collateral source "means a source of benefits or advantages for *economic loss* . . . ." MINN. STAT. § 299B.02(4) (1974). (Emphasis added.) Recovery under the "peace officer act" is not dependent on economic loss.

### c. Contributory Misconduct

The amount of any award is to be reduced "to the extent . . . that the board deems reasonable because of the contributory misconduct of the claimant or of a victim through whom he claims . . . ." <sup>251</sup> The provision, in essence, establishes a pure comparative fault scheme, whereby the Board may set the contributory misconduct at anywhere from 100 percent to zero percent. <sup>252</sup> The term "contributory misconduct" is not defined in the Act, although the reparations acts of other states reduce or deny recovery where the behavior or involvement of the victim has contributed to his injury or death. <sup>253</sup> In all cases, an attempt to prevent a crime or to apprehend a person suspected of engaging in a crime will not be considered contributory misconduct. <sup>254</sup> Because of the breadth of the term "contributory misconduct," the Board should consider a number of factors to determine whether sufficient reason exists to reduce the claimant's award, such as whether there was provocation, consent, involvement in illegal activities, or any other intentional or negligent actions which in any way contributed to or increased the victim's injury.

### G. Attorneys' Role and Fees

The original Act contained no provision for attorneys' fees or for the role of attorneys in the program, <sup>255</sup> a possible indication of the legislature's desire

251. MINN. STAT. § 299B.04(2) (1974).

252. Since the Board may reduce an award without limit to the extent commensurate with the victim's contributory conduct, it is conceivable that an award could be completely denied. See H. EDELHERTZ & G. GEIS, PUBLIC COMPENSATION TO VICTIMS OF CRIME 147-48 (1974) which illustrates a 10% reduction of an award by the Hawaii commission to the survivors of a victim whose death resulted from his illicit participation in prostitution. In New York the degree of the victim's contributory misconduct does not cause a proportional reduction of the award. Instead, the misconduct is assessed and the award is made or denied altogether. *Id.* at 54-55.

253. See ALASKA STAT. § 18.67.080(c) (1974) (provocation, consent, and other contributory conduct); CAL. GOV'T CODE §§ 13964(a), (c) (West Supp. 1976) (knowing or willful participation in the crime); DEL. CODE ANN. tit. 11, § 9006(c) (Supp. 1975) (victim bears any share of responsibility that caused his injury); HAWAII REV. STAT. § 351-31(c) (Supp. 1975) (victim's responsibility for injury or death); Act of June 6, 1976, act 139, § 2, [1976] Pa. Legis. Serv. 278 (West), to be codified as PA. STAT. ANN. tit. 71, 180-7.8(f) (conduct which contributed to infliction of victim's injury); VA. CODE ANN. § 19.2-368.12A (Supp. 1976) (conduct which contributed to infliction of victim's injury); WASH. REV. CODE ANN. § 7.68.070(3)(a) (Supp. 1976) (consent, provocation, or incitement); Act of June 6, 1976, ch. 344, § 3, [1976] Wis. Legis. Serv. 1621 (West), to be codified as WIS. STAT. § 949.06(5) (victim contributed to infliction of his injury or death). But see N.J. STAT. ANN. § 52:4B-12 (Supp. 1976) (contributory misconduct merely a permissive factor to be considered).

254. If it were otherwise, the effect of the definition of "victim" under the Act would be emasculated. MINN. STAT. §§ 299B.02(9)(b)-(c) (1974) define a victim as:

[A] person who suffers personal injury or death as a direct result of . . . (b) the good faith effort of any person to prevent a crime; or (c) the good faith effort of any person to apprehend a person suspected of engaging in a crime.

255. Such provisions vary among other jurisdictions, with attorney participation ranging from 11 to 90 percent and varying fees being taken from either the award or the program. In New York, one out of five claimants was represented by attorneys, mostly in death cases. 4 NEW

to keep the proceedings as informal as possible.<sup>256</sup> In 1975, however, the Act was amended to allow the Board to "limit the fee charged by an attorney for representing a claimant before the board."<sup>257</sup> The amendment thus allows the Board, on its own initiative, to interfere with the contractual agreement between the claimant and the attorney on a case-by-case basis.<sup>258</sup>

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YORK CRIME VICTIMS COMPENSATION BOARD, ANN. REP. 7 (1970). In Hawaii, from 10 to 22 percent of the claimants have been represented by attorneys. EDELHERTZ & GEIS, *supra* note 252 at 147. In Maryland, more than 90 percent of the claims are filed by attorneys. 4 MARYLAND CRIMINAL INJURIES COMPENSATION BOARD, ANN. REP. 10 (1973). In Hawaii, if the award is less than \$1,000, the amount of the fee is set at the discretion of the Board. If greater than \$1,000, the fee cannot be more than 15 percent, with the amount taken from the award. HAWAII REV. STAT. § 351-16 (1968). In New Jersey, the Board may allow reasonable fees up to 15 percent of the amount awarded to be paid in addition to the compensation award. N.J. STAT. ANN. § 52:4B-8 (Supp. 1975). In Minnesota, a 1974 conference committee eliminated a provision that the Board had the right to determine reasonable attorneys' fees. Note 61 *supra*.

256. Board hearings are not required for every claim. MINN. STAT. § 299B.07, subd. 3 (1974). Of course one of the purposes of eliminating a mandatory hearing for every claim is to allow expeditious determination of the claim. *See Tape of Joint Meeting on S.F. 884 Before the Minnesota Senate Comm. on the Judiciary and the Minnesota House Comm. on Crime Prevention & Corrections* (Nov. 13, 1973) (remarks of Stanley Van Rensselaer, Chairman of the New York Crime Victims Compensation Board). It is expected that most cases will not reach the hearing stage and can be resolved by considering police, medical, and investigative reports as well as information from the claimant. For example, in the year immediately preceding passage of the Minnesota Act less than 25% of the New York Board decisions required a full hearing. *Compare* 7 NEW YORK CRIME VICTIMS COMPENSATION BOARD, ANN. REP. 17 (1973) (83 board hearings) *with id.* at 13 (1887 decisions). Even when a hearing is necessary, attorneys are generally "inappropriately legalistic for the informal atmosphere normally maintained in the hearings." H. EDELHERTZ & G. GEIS, *supra* note 252, at 57.

257. MINN. STAT. § 299B.071 (Supp. 1975). *But see* MINN. STAT. § 549.01 (1974) (client may enter into an agreement with attorney regarding fees). In making a determination of the fees which can be charged by an attorney, the Board may consider work actually done, the claimant's financial situation and the type of award made. This is the approach taken by the New York Commission, with the qualification that attorneys' fees are approved only when the claim includes loss of earnings or support or when part of the medical expenses have been paid by the claimant. H. EDELHERTZ & G. GEIS, *supra* note 252, at 56-57.

A Minnesota Senate bill as originally introduced in 1973 provided that the compensation award could include reasonable attorneys' fees. S.F. 884, 68th Minn. Legis., 1st Sess. § 8, subd. 6 (1973). This was a necessary aspect of compensating the victim because considerable fees could be expected as the bill also provided that the claim would be heard by the district court, not by a reparations board. *See id.* § 7, subd. 1. Although not mandated by statute, the Minnesota Crime Victims Reparations Board has decided it does not have the power to grant attorneys' fees in addition to the basic compensation award. Letter from Samuel L. Scheiner, Executive Director of the Minnesota Crime Victims Reparations Board to William Mitchell Law Review, Sept. 1, 1976. *But cf.* MINN. STAT. § 176.511, subd. 3 (Supp. 1975) (workers' compensation commission may award attorneys' fees incurred for review of affirmed compensation award).

258. State statutes limiting prospectively the compensation of an attorney for the processing of a claim have been upheld under a variety of acts as a valid regulation of the practice of law. *See Yeiser v. Dysart*, 267 U.S. 540 (1925) (Holmes, J.) (workers' compensation; state, as incident of granting the privilege to practice law, may attach reasonable conditions to the collection of attorneys' fees); *Sarja v. Pittsburgh Steel Co.*, 154 Minn. 217, 191 N.W. 742, *cert. denied*, 262 U.S. 754, *appeal dismissed for want of jurisdiction per curiam sub nom.* *Swanson v. Sarja*, 263 U.S. 685 (1923) (fee limitation provisions of workers' compensation act valid); *Blair*

The intention of the amendment was to protect those claimants with more complicated cases who retain counsel from paying exorbitant fees. But the amendment is ambiguous. It is possible to interpret the phrase "representing a claimant before the board" as covering only appearances by an attorney at a hearing in front of the entire Board, because the Act defines "board" as the three members only<sup>259</sup> and does not extend it to the Board's staff or to a single member of the Board. Under this interpretation, it would not be within the power of the Board to limit attorneys' fees in those cases where a full Board hearing was never held. Yet the term "representing" would seem to include all preparations for an eventual hearing as well as the appearance in front of the Board. Consequently, the amendment apparently did not clearly accomplish its intended purpose because it may empower the Board to limit fees only in those relatively rare instances where a hearing before the full Board is conducted.

### H. Publicity

"A major shortcoming of every [reparations] program is that most of its customers, victims of violent crime, are not aware of it."<sup>260</sup> In no state has information regarding the program reached a majority of the victims of crime.<sup>261</sup> Although the legislature's relatively small initial appropriation for

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v. Village of Coleraine, 180 Minn. 388, 231 N.W. 193 (1930) (same statute controls where parties have contingency agreement which provided for greater compensation). *See also* Capital Trust Co. v. Calhoun, 250 U.S. 208 (1919) (percentage limitation in federal statute on compensation for attorneys for processing of Civil War claims upheld as valid incident of regulation of federal funds); Calhoun v. Massie, 253 U.S. 170 (1920) (Brandeis, J.) (5-4 decision) (same).

It is an open question, however, whether the fee-limiting provisions of the Act could be applied retroactively without violating constitutional prohibitions against the impairment of contracts. *See* Fry v. Wolfe, 106 Okla. 289, 293, 234 P. 191, 194 (1924) (by implication) (retroactive application of statute altering attorney-client contract invalid); U.S. CONST. art. I, § 10 ("No State shall . . . pass any . . . Law impairing the Obligation of Contracts . . ."); MINN. CONST. art. 1, § 11 ("No . . . law impairing the obligation of contracts shall ever be passed . . ."). *But see* Home Bldg. & Loan Ass'n v. Blaisdell, 290 U.S. 398 (1934) (mortgage moratorium). *See generally* Note, *Moratory Legislation for the Relief of Mortgagors*, 18 MINN. L. REV. 319, 322-26 nn.12-17 (1934). The issue is complicated, however, by the fact that state monies are involved. The contract is thus not one merely involving the rights of the victim against a private individual. The federal decisions mentioned above, although not by nature dealing with the contract clause since that clause only proscribes activities by the states, do concern the limitation of recovery of attorneys' fees as a part of the regulation of the use of public monies. This precedent might add support to a less restrictive reading of the contract clause in this instance since state monies are involved. *See also* City of El Paso v. Simmons, 379 U.S. 497 (1965) (*semble*) (state apparently given greater leeway to alter contract if it is a party to it). As a practical matter, however, it is expected that few claims would be affected by the amendment.

259. MINN. STAT. § 299B.05, subd. 1 (1974).

260. H. EDELHERTZ & G. GEIS, *supra* note 252, at 281.

261. For example, in 1974 Alaska experienced 1,269 violent crimes against the person, Hawaii experienced 1,295, Maryland experienced 26,093, and New York experienced 133,561. U.S. FED. BUREAU OF INVESTIGATION, UNIFORM CRIME REPORTS 56, 58, 60 (1974). Yet the crime victims compensation boards of the respective states received only 50, 165, 1,500, and 2,341 inquiries or applications. *See* 1 ALASKA VIOLENT CRIMES COMPENSATION BOARD, ANN. REP.

the program may indicate that the legislature was not enthusiastic about soliciting claims,<sup>262</sup> the Act contains a provision creating a statutory duty for the Board to publicize the program<sup>263</sup> and for law enforcement agencies to inform victims of their rights under the Act.<sup>264</sup>

No sanctions for failure to perform these statutory duties are imposed, however, giving rise to the possibility that a victim may allege negligence by a public official or officer for failure to inform the victim of the existence of the program.<sup>265</sup> This possibility of suit has led California to repeal its statutory duty to inform.<sup>266</sup> In fact, the real purpose served by the imposition of these duties is to underscore the concern of the legislature that the program benefit the greatest number of eligible claimants possible and to reflect a desire that the program become an integral part of the criminal justice system.

In spite of the efforts of the Board and law enforcement agencies to publicize the program, the number of claims filed to date has been small in relation to the number of crimes actually committed. For example, during the

14 (Supp. 1974); 7 HAWAII CRIMINAL INJURIES COMPENSATION COMM'N, ANN. REP. 5 (1974); 5 MARYLAND CRIMINAL INJURIES COMPENSATION BOARD, ANN. REP. 7 (1974); 8 NEW YORK CRIME VICTIMS COMPENSATION BOARD, ANN. REP. 5 (1974).

262. See H. EDELHERTZ & G. GEIS, *supra* note 252, at 281.

263. Concerned that the bulk of the appropriations be used for making awards to victims of crime and not for administrative purposes, the Board has followed the general example of other state programs in utilizing publicity techniques which require very minimal direct expenditure of funds. Thus, the Board has taken advantage of public service announcements in the media, appearances before community groups, participation in police sensitivity programs, television appearances, distribution of information to local news media and legislators whenever awards are made to victims from the area, and publication and distribution of informational brochures to sheriffs, chiefs of police, county attorneys, hospitals, welfare agencies, and the Minnesota Funeral Directors Association. Letter from Samuel L. Scheiner, Executive Director of the Minnesota Crime Victims Reparations Board to William Mitchell Law Review, Aug. 24, 1976.

264. The imposition of a duty on law enforcement agencies provides an effective and efficient method of publicity, since law enforcement agencies have prime access to those victims who report a crime. See Lamborn, *The Methods of Governmental Compensation of Victims of Crime*, 1971 U. ILL. L.F. 655, 668-71. The Minnesota Board feels that this type of contact with law enforcement people has encouraged citizens to report crimes, thus resulting in more efficient law enforcement and improved relations between the community and police. Letter from Samuel L. Scheiner, Executive Director of the Minnesota Crime Victims Reparations Board to William Mitchell Law Review, Aug. 24, 1976. Such police involvement will also hopefully lead to a heightened awareness by law enforcement officers of the burden on crime victims. The Board has given approximately 10,000 wallet-size cards, containing basic information regarding the rights of a victim to file a claim under the Act, to law enforcement officers throughout the state for distribution to crime victims. *Id.*

265. State and municipal governments are liable up to certain statutory limits for losses stemming from an act or omission of an employee while performing his statutory duties unless the employee exercised due care or the duty was discretionary. See *Nieting v. Blondell*, \_\_\_\_ Minn. \_\_\_\_, 235 N.W.2d 597 (1975) (state tort immunity abolished); Act of Apr. 20, 1976, ch. 331, § 33, [1976] Minn. Sess. Laws 1293 (state); MINN. STAT. §§ 466.02, .03 subds. 5-6 (1974) (municipalities).

266. The county district attorneys, who were required to inform the crime victims of the program, provided the impetus for repeal of the statute. Lamborn, *supra* note 264, at 669.

first two years of operations, 580 claims were filed,<sup>267</sup> while approximately 4,000 violent crimes against the person were known or reported.<sup>268</sup> The relative infancy of the program may account in part for this initial low rate of filing.

### *I. Confidentiality of Information on Victims*

The Act provides no protection for the confidentiality of information obtained in the course of the Board's proceedings, a problem most acute in sex crime cases. Instead, the Act requires the Board to submit an annual report, which is to include the names of the victims.<sup>269</sup> In addition, the Minnesota Open Meeting Law requires the meetings of the Board to be open to the public. Furthermore, the Minnesota data privacy act requires the information regarding victims to be available to the public.

The requirement mandating the publication of the names of victims in the annual report to the legislature and the governor seems to be unnecessary. Because the purpose of such a report is to publicize the Board's activities and to provide an opportunity for scrutiny, criticism, and modification of existing policies and procedures, disclosure of the general characteristics of each case would appear to be sufficient for the purposes of the report.<sup>270</sup>

The Minnesota Open Meeting Law provides that except as is otherwise provided by law, all meetings of state boards "when required or permitted by law to transact public business in a meeting" shall be open to the public.<sup>271</sup> This law was enacted in order to protect the public against secret actions taken at meetings, without free discussion and on the basis of undisclosed factors.<sup>272</sup> Because the meetings of the Board include the assignment of claims to members, reports of members regarding determinations of claims they have investigated, and the discussion and adoption of program policies and

267. Board Register, *supra* note 72, table II.

268. See MINNESOTA BUREAU OF CRIMINAL APPREHENSION, MINNESOTA CRIME INFORMATION 30, 32, 37 (1974) (113 homicides, 687 rapes, 3,221 aggravated assaults). This is a low percentage, even when considered in view of the fact that some potential claimants may have been deterred from filing claims because they were aware that they might not have qualified for compensation, for example, because of victim misconduct, MINN. STAT. § 299B.04(2) (1974), recovery from a collateral source, *id.* § 299B.02(4), or failure to comply with statutory loss, *id.* § 299B.04, reporting, or cooperation requirements, *id.* § 299B.03, subds. 2(a)-(b) (1974), as amended, Act of Apr. 8, 1976, ch. 193, § 1, [1976] Minn. Sess. Laws 657.

269. MINN. STAT. § 299B.06, subd. 1(e) (1974).

270. On April 30, 1976, the Board adopted a policy not to include the names of rape victims in the register. This decision was made with full knowledge that it was in violation of the Board's statutory duty but the Board felt that, in good judgment, it had to take such action. Upon a proper showing, the name of a rape victim will be made available. Board Register, *supra* note 72, table I.

271. MINN. STAT. § 471.705, subd. 1 (1974).

272. Op. Minn. Att'y Gen. 63-a-5 (Oct. 28, 1974), reprinted in 7 MINN. LEGAL REGISTER 40 (1974).

273. Letter from Samuel L. Scheiner, Executive Director of the Minnesota Crime Victims Reparations Board to William Mitchell Law Review, Aug. 24, 1976. Minutes are kept of every meeting.

guidelines,<sup>273</sup> there is little question that the meetings are required to be open to the public.<sup>274</sup> Yet it is difficult to argue that the purposes of the Act are being served where the discussion involves details which identify the individual who has been a victim of a sex crime. Although there are indications that protection of the confidentiality of certain types of claims in order not to discourage sex crime victims from filing claims is not repugnant to the public's right to know how an agency makes public policy decisions,<sup>275</sup> it is likely that in order to solve this problem, special legislation exempting the Board from the provisions of the Open Meeting Law is the appropriate remedy for the Board to pursue.

The classification of Board documents as "public" under the state privacy act<sup>276</sup> mandates a similar remedy. Pursuant to the data privacy act, the Board's files must be open to the public. This act establishes three classifications of "data on individuals"<sup>277</sup> kept by state agencies—public, private, and confidential. All data that is not made non-public by a state or federal law is considered to be "public data."<sup>278</sup> "Private data" is that which is not public but is accessible to the data subject;<sup>279</sup> whereas "confidential data" is that which is not public and not accessible to the data subject.<sup>280</sup> To make data non-public where it has not been made so by state or federal law the Board may apply for a temporary emergency non-public classification from the state com-

274. See Op. Minn. Att'y Gen. 63-a-5 (Oct. 28, 1974), *reprinted in* 7 MINN. LEGAL REGISTER 40-42 (1974). All meetings are open to the public and notice of the meetings are sent to the press room at the State Capitol, the office of the Commissioner of Public Safety, Board members, and the attorney general's office. Letter from Samuel L. Scheiner, Executive Director of the Minnesota Crime Victims Reparations Board to William Mitchell Law Review, Aug. 24, 1976. The Board is confident that the press will continue its usual practice of not publishing the names of rape victims. *Id.*

275. Op. Minn. Att'y Gen. 125-a-64 (Dec. 4, 1972), *reprinted in* 5 MINN. LEGAL REGISTER 93-94 (1972), approved the exclusion of the public from parts of county welfare board meetings pursuant to a regulation promulgated by the commissioner of public welfare intended to assure the confidentiality of certain information on public assistance recipients. In balancing the public's right to be informed against the individual's right to privacy it distinguished between the public interest in disclosure of public policy decisions and the public interest in disclosure of details regarding "ministerial decisions of public agencies relating to the application of public policy to particular individuals." Because the commissioner's regulation only affected ministerial decisions the attorney general concluded the individual's interest in privacy prevailed. This reasoning applies to similar aspects of meetings by the Crime Victims Reparations Board.

276. MINN. STAT. § 15.162-.169 (Supp. 1975), *as amended*, Act of Apr. 13, 1976, ch. 283, [1976] Minn. Sess. Laws 1063.

277. This term covers all "records, files and processes" in which an individual is or can be identified. MINN. STAT. § 15.162, subd. 3 (Supp. 1975).

278. Compare MINN. STAT. § 15.162, subd. 5b (Supp. 1975) with Act of Apr. 13, 1976, ch. 283, §§ 2, 4, [1976] Minn. Sess. Laws 1063, 1064.

279. Act of Apr. 13, 1976, ch. 283, § 4, [1976] Minn. Sess. Laws 1064, *amending* MINN. STAT. § 15.162, subd. 5(a) (Supp. 1975).

280. Act of Apr. 13, 1976, ch. 283, § 2, [1976] Minn. Sess. Laws 1063, *to be codified as* MINN. STAT. § 15.162, subd. 2a.

281. Act of Apr. 13, 1976, ch. 283, § 8, [1976] Minn. Sess. Laws 1065, *to be codified as* MINN. STAT. § 15.642.



missioner of administration.<sup>281</sup> The Board would have to prove that "the data on individuals has been treated as either private or confidential by custom of long standing which has been recognized by other similar state agencies . . . and by the public."<sup>282</sup> Due to the newness of the program,<sup>283</sup> this burden will be difficult to overcome.

In any case, the emergency classification would be effective only until June 30, 1977.<sup>284</sup> Therefore, if the Board desires to obtain a non-public classification, the more effective approach is to seek a legislative remedy. Upon amendment of the Act permitting classification of data as private, the use and dissemination of the information would be limited to "that necessary for the administration and management of programs specifically authorized by the legislature . . . ." <sup>285</sup> Because summary data made from private information, but from which the individual's identity is not ascertainable,<sup>286</sup> would still be available to the public,<sup>287</sup> both public and private needs would be satisfied by the amendment. Should the Act remain as it is, the public will gain little additional information from examining these documents, while victims of sex crimes may well be discouraged from filing claims.

#### IV. CONCLUSION

The Minnesota Crime Victims Reparations Act exemplifies a growing recognition of the plight of the innocent victim of crime. The Act is the result of an effort to provide adequate coverage for the victim without placing an undue burden on public funds. While some of the language of the Act is subject to a variety of interpretations, the strength of the Act rests in the latitude these ambiguities provide the Board in considering claims. The Board's duty to publicize the Act, the duty of law enforcement agencies to inform crime victims of their rights under the Act, and the utilization of uncomplicated and informal administrative procedures provide the means essential to insure that recovery under the broad provisions of the Act be made readily accessible to the victim of crime when other resources are unavailable. In a practical way, the Act reflects a humanitarian policy of which all those within the state are beneficiaries.

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282. Act of Apr. 13, 1976, ch. 283, § 8, [1976] Minn. Sess. Laws 1065, *to be codified as* MINN. STAT. § 15.1642, subd. 2.

283. It is the policy of the Board to make available to the public only that information in a claimant's file which is required to be included in the annual report to be submitted to the legislature and the governor pursuant to MINN. STAT. § 299B.06, subd. 1(e) (1974). However, a claimant has access at all times to all information in the file. *See* letter from Samuel L. Scheiner, Executive Director of the Minnesota Crime Victims Reparations Board to Richard L. Creighton, Director of Management Information Systems, State of Minnesota, July 10, 1975. In addition, the state auditor, the Board members, the Executive Director, and other personnel employed by the Board have complete access to the files. Letter from Samuel L. Scheiner, Executive Director of the Minnesota Crime Victims Reparations Board to William Mitchell Law Review, Aug. 24, 1976.

284. Act of Apr. 13, 1976, ch. 283, § 8, subd. 3, [1976] Minn. Sess. Laws 1066.

285. MINN. STAT. § 15.1641(b) (Supp. 1975).

286. *Id.* § 15.162, subd. 9.

287. *Id.* § 15.1641(d).